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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2417

Testimony by FLRA Employees and Production of Official Records in Legal Proceedings

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) amends its procedures for requesters to follow when making requests to or demands on an employee of the FLRA's three-member Authority component (Authority), the Office of the General Counsel, or the Federal Service Impasses Panel (Panel) to produce official records or provide testimony relating to official information in connection with a legal proceeding. Specifically, the amendments expand the regulation's definition of "legal proceeding" to include matters in which the FLRA is a party. The amendments additionally delegate decision-making responsibility to the heads of each of the three components, depending on where the information is located, to ensure that responses to such requests or demands are handled in an orderly, efficient, and consistent manner. The amended procedures will better protect confidential information, provide guidance to requesters and FLRA employees, and reduce the potential for both inappropriate disclosures of official information and wasteful allocation of FLRA resources.

DATES: Effective September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Fred B. Jacob, Solicitor, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424; (202) 218–7999; fax: (202) 343–1007; or email: *solmail@flra.gov.*

SUPPLEMENTARY INFORMATION: The FLRA is amending 5 CFR part 2417. Before part 2417's promulgation in March 2009, 5 CFR 2411.11 prohibited FLRA employees from producing documents or giving testimony in response to a subpoena or other request or demand in any civil proceeding without the written consent of the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate. Under the prior version of § 2411.11, any employee served with a subpoena or request or demand who was not given the requisite written consent was instructed to move to have the subpoena invalidated "on the ground that the evidence sought is privileged against disclosure by this rule." Part 2417 eliminated the assertion of privilege and, in its place, established factors for the FLRA to evaluate when considering requests or demands for non-public FLRA information. It also placed decision-making authority exclusively with the Chairman of the FLRA or his or her designated representative.

As described above, the FLRA is amending the regulations to include requests or demands for production of documents or testimony in legal proceedings in which the FLRA is a named party. This is consistent with the FLRA's prior regulations and other agencies' regulations. The FLRA is also amending the regulations to vest decision-making authority over such requests or demands to the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, or to his or her designee. The FLRA has additionally included some minor non-substantive changes to correct typographical errors and to make small stylistic adjustments for clarification.

This rule will ensure a more efficient use of the FLRA's resources, minimize the possibility of involving the FLRA in issues unrelated to its responsibilities, and maintain the impartiality of the FLRA in matters that are in dispute between other parties. It will also continue to serve the FLRA's interest in protecting sensitive, confidential, and privileged information and records that are generated in fulfillment of the FLRA's statutory responsibilities.

This rule is internal and procedural rather than substantive. It does not create a right to obtain official records or the official testimony of an FLRA employee, nor does it create any additional right or privilege not already available to the FLRA to deny any request or demand for testimony or documents. Failure to comply with the procedures set out in these regulations would be a basis for denying a request or demand submitted to the FLRA.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

Public Participation

This rule is published as a final rule. It is exempt from public comment, pursuant to 5 U.S.C. 553(b)(A), as a rule of "agency organization, procedure, or practice."

List of Subjects in 5 CFR Part 2417

Administrative practice and procedure, Government employees.

For the reasons stated in the preamble, the Federal Labor Relations Authority amends 5 CFR part 2417 as set forth below:

PART 2417—TESTIMONY BY EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

■ 1. The authority citation for part 2417 continues to read as follows:

Authority: 5 U.S.C. 7105; 31 U.S.C. 9701; 44 U.S.C. 3101–3107.

Subpart A—General Provisions

■ 2. Amend § 2417.101 by revising paragraphs (a)(1) and (2), (b)(1), (2), (3), and (4), and (d) to read as follows:

§ 2417.101 Scope and purpose.

(a) * * *

(1) The production or disclosure of official information or records by employees, members, advisors, and consultants of the Federal Labor Relations Authority's (FLRA's) three-Member Authority component (the Authority), the Office of the General Counsel(the General Counsel), or the Federal Service Impasses Panel (the Panel); and

(2) The testimony of current and former employees, members, advisors, and consultants of the Authority, the General Counsel, or the Panel relating to official information, official duties, or official records, in connection with a legal proceeding on behalf of any party to a cause pending in civil federal or state litigation, including any proceeding before the FLRA or any other board, commission, or administrative agency of the United States.

(b) * * *

(1) Conserve employees' time for conducting official business;

(2) Minimize employees' involvement in issues unrelated to the FLRA's mission;

(3) Maintain employees' impartiality in disputes between private litigants; and

(4) Protect sensitive, confidential information and the integrity of the FLRA's administrative and deliberative processes.

* * * * *

(d) This part provides guidance for the FLRA's internal operations. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

■ 3. Amend § 2417.102 by revising the introductory text and paragraphs (a), (b), (d), and (e) to read as follows:

§ 2417.102 Applicability.

This part applies to requests and demands to current and former employees, members, advisors, and consultants for factual or expert testimony relating to official information or official duties, or for production of official records or information, in civil legal proceedings. This part does not apply to:

(a) Requests for or demands upon an employee to testify as to facts or events that are unrelated to his or her official duties, or that are unrelated to the functions of the Authority, the General Counsel, or the Panel;

(b) Requests for or demands upon a former employee to testify as to matters in which the former employee was not directly or materially involved while at the Authority, the General Counsel, or the Panel;

* * * * *

(d) Congressional requests and demands for testimony, records, or information; or

(e) Requests or demands for testimony, records, or information by any Federal, state, or local agency in furtherance of an ongoing investigation of possible violations of criminal law.

■ 4. Revise § 2417.103 to read as follows:

§ 2417.103 Definitions.

The following definitions apply to this part:

Demand means an order, subpoena, or other command of a court or other competent authority for the production, disclosure, or release of records, or for the appearance and testimony of an employee in a civil legal proceeding.

Employee means:

(1)(i) Any current or former employee or member of the Authority, the General Counsel, or the Panel;

(ii) Any other individual hired through contractual agreement by or on behalf of the Authority, the General Counsel, or the Panel, or who has performed or is performing services under such an agreement for the Authority, the General Counsel, or the Panel; and

(iii) Any individual who served or is serving in any consulting or advisory capacity to the Authority, the General Counsel, or the Panel, whether formal or informal.

(2) This definition does not include former FLRA employees who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the FLRA.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a civil legal or administrative proceeding. Legal proceeding includes all phases of litigation.

Records or official records and information means all information in the custody and control of the Authority, the General Counsel, or the Panel, relating to information in the custody and control thereof, or acquired by an employee while in the performance of his or her official duties or because of his or her official status, while the individual was employed by or on behalf of the Authority, the General Counsel, or the Panel.

Request means any request, by whatever method, for the production of records and information or for testimony that has not been ordered by a court or other competent authority.

Requester means anyone who makes a request or demand under this part upon the FLRA.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

■ 5. Revise the heading for subpart B to read as follows:

Subpart B—Requests or Demands for Testimony and Production of Documents

■ 6. Revise § 2417.201 to read as follows:

§ 2417.201 General prohibition and designation of the appropriate decision-maker.

(a) *General prohibition.* No employee or former employee of the Authority, the General Counsel, or the Panel may produce official records and information or provide any testimony relating to official information in response to a request or demand without the prior, written approval of the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate.

(b) *Appropriate decision-maker.* (1) The Chairman of the FLRA, or his or her designee, determines whether to grant approval if the record requested or demanded is maintained by the FLRA's Authority component, or the person who is the subject of the request or demand is subject to the supervision or control of the FLRA's Authority component or was subject to such supervision or control when formerly employed at the FLRA.

(2) The General Counsel, or his or her designee, determines whether to grant

approval if the record requested or demanded is maintained by the General Counsel, or the person who is the subject of the request or demand is subject to the supervision or control of the General Counsel or was subject to such supervision or control when formerly employed at the FLRA.

(3) The Chairman of the Panel, or his or her designee, determines whether to grant approval if the record requested or demanded is maintained by the Panel, or the person who is the subject of the request or demand is subject to the supervision or control of the Panel or was subject to such supervision or control when formerly employed at the FLRA.

■ 7. Amend § 2417.202 by revising the section heading, introductory text, and paragraphs (f), (h), (i), (m), (n), and (o) to read as follows:

§ 2417.202 Factors that the decision-maker will consider.

The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a request or demand. Among the relevant factors that the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel may consider in making this decision are whether:

* * * * *

(f) The request or demand is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the request or demand arose;

* * * * *

(h) Disclosure would reveal confidential, sensitive, or privileged information; trade secrets or similar, confidential or financial information; otherwise protected information; or information that would otherwise be inappropriate for release;

(i) Disclosure would impede or interfere with an ongoing law-enforcement investigation or proceeding, or compromise constitutional rights or national-security interests;

* * * * *

(m) The request or demand is within the authority of the party making it;

(n) The request or demand is sufficiently specific to be answered; and

(o) Any other factor deemed relevant under the circumstances of the particular request or demand.

■ 8. Amend § 2417.203 by revising the introductory text and paragraphs (a), (b) introductory text, (b)(4), (5), (6), (7), and (9), (c), (d), (e), and (f) to read as follows:

§ 2417.203 Filing requirements for litigants seeking documents or testimony.

A requester must comply with the following requirements when filing a request or demand for official records and information or testimony under part 2417. Requesters should file a request before a demand.

(a) The request or demand must be in writing and must be submitted to the FLRA's Office of the Solicitor.

(b) The written request or demand must contain the following information:

* * * * *

(4) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and the burden on the FLRA to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an employee, such as a retained expert;

(6) If testimony is sought, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

* * * * *

(9) An estimate of the amount of time that the requester and other parties will require for each employee to prepare for testimony, to travel to the legal proceeding, and to attend the legal proceeding.

(c) The Office of the Solicitor reserves the right to require additional information to complete the request, where appropriate.

(d) Requesters should submit their request or demand at least 30 days before the date that records or testimony are required. Requests or demands submitted fewer than 30 days before records or testimony are required must be accompanied by a written explanation stating the reasons for the late request or demand and the reasons that would justify expedited processing.

(e) Failure to cooperate in good faith to enable the FLRA to make an informed decision may serve as the basis for a determination not to comply with the request or demand.

(f) The request or demand should state that the requester will provide a copy of the employee's statement at the expense of the requester and that the requester will permit the FLRA to have a representative present during the employee's testimony.

■ 9. Revise § 2417.204 to read as follows:

§ 2417.204 Where to submit a request or demand.

(a) Requests or demands for official records, information, or testimony under this part must be served on the Office of the Solicitor at the following address: Office of the Solicitor, Federal Labor Relations Authority, 1400 K Street NW., Suite 201, Washington, DC 20424–0001; telephone: (202) 218–7999; fax: (202) 343–1007; or email: *solmail@flra.gov*. The request or demand must be sent by mail, fax, or email and clearly marked "Part 2417 Request for Testimony or Official Records in Legal Proceedings."

(b) A person requesting public FLRA information and non-public FLRA information under this part may submit a combined request for both to the Office of the Solicitor. If a requester decides to submit a combined request under this section, the FLRA will process the combined request under this part and not under part 2411 (the FLRA's Freedom of Information Act regulations).

■ 10. Revise § 2417.205 to read as follows:

§ 2417.205 Consideration of requests or demands.

(a) After receiving service of a request or a demand for official records, information, or testimony, the appropriate decision-maker will review the request and, in accordance with the provisions of this part, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the appropriate decision-maker will issue a determination within 30 days from the date that it receives the request.

(c) The appropriate decision-maker may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of the FLRA or the United States or for other good cause.

(d) The FLRA may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the Office of the Solicitor at least 30 days before the date that they will be needed.

■ 11. Revise § 2417.206 to read as follows:

§ 2417.206 Final determination.

The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, makes the final determination on demands or requests to employees thereof for production of official records and information or testimony in civil litigation under this part. All final determinations are within the sole discretion of the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate. The appropriate decision-maker will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that may be imposed on the release of records or information, or on the testimony of an employee. This final determination exhausts administrative remedies for discovery of the information.

■ 12. Amend § 2417.207 by revising paragraphs (c) introductory text, (c)(2), and (d) to read as follows:

§ 2417.207 Restrictions that apply to testimony.

* * * * *

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, the employee shall not:

* * * * *

(2) For a current employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the FLRA unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the approval of the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate.

■ 13. Revise § 2417.208 to read as follows:

§ 2417.208 Restrictions that apply to released records.

(a) The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate. In cases where protective orders or confidentiality agreements have already been executed, the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate so determines, original records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official records, nor may they be marked or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

■ 14. Revise § 2417.209 to read as follows:

§ 2417.209 Procedure when a decision is not made before the time that a response is required.

If a response to a demand or request is required before the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel can make the determination referred to in § 2417.206, the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

■ 15. Revise § 2417.210 to read as follows:

§ 2417.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

Subpart C—Schedule of Fees

■ 16. Revise § 2417.301 to read as follows:

§ 2417.301 Fees.

(a) *Generally.* The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records; costs for employee time spent reviewing the request; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. The FLRA will calculate and charge these fees, costs, and expenses as it charges like fees and costs arising from requests made pursuant to the Freedom of Information Act regulations in part 2411 of this chapter.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include costs for time spent by the witness to prepare for testimony, to travel to the legal proceeding, and to attend the legal proceeding.

(d) *Payment of fees.* A requester must pay witness fees for current employees and any record certification fees by submitting to the Office of the Solicitor a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former employees, the requester must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* The FLRA will not assess fees if the total charge would be $10.00 or less.

Subpart D—Penalties

■ 17. Amend § 2417.401 by revising paragraph (a) to read as follows:

§ 2417.401 Penalties.

(a) An employee who discloses official records or information, or who gives testimony relating to official information, except as expressly authorized by the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, or as ordered by a Federal court after the FLRA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

* * * * *

Dated: September 1, 2016.

Carol Waller Pope,

Chairman.

[FR Doc. 2016–21427 Filed 9–14–16; 8:45 am]

BILLING CODE P

FARM CREDIT ADMINISTRATION

12 CFR Part 602

RIN 3052–AD18

Releasing Information; Availability of Records of the Farm Credit Administration; FOIA Fees

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) issues a final rule amending its regulations to reflect changes to the Freedom of Information Act (FOIA). The FOIA Improvement Act of 2016 requires FCA to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend the way FCA charges fees.

DATES: This regulation will become effective no earlier than 30 days after publication in the **Federal Register** during which either one or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mike Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703)–883–4124, TTY (703) 883–4434; or Autumn Agans, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090. (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this final rule is to reflect changes to the FOIA by the FOIA Improvement Act of 2016 (Improvement Act). The Improvement Act added additional protections for requesters of records held by the executive branch of the U.S. Government.

II. Background

The FOIA was enacted to give the public a right to access records held by the executive branch that, although not classified, were not otherwise available to them.[1] Since its enactment in 1966, the FOIA has been amended on a number of occasions to adapt to the times and changing priorities.

III. FOIA Procedures

The Improvement Act contains several substantive and procedural amendments to the FOIA, as well as new reporting requirements for agencies.[2] The Improvement Act addresses a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process. The Improvement Act also updates how fees are assessed.

IV. Section-by-Section Analysis

A. Section 602.8

We revise § 602.8 by:

1. Changing the appeals deadline from 30 days to 90 days in paragraph (a); and
2. Adding FCA's FOIA Public Liaison and the Office of Government Information Services to the list of offices available to offer dispute resolution services in paragraph (d).

B. Section 602.12

We revise § 602.12 by adding paragraphs (f), (g), and (h) with updated information about charging fees.

C. Section 602.16

We revise § 602.16 by removing the last line of the paragraph, which requires FCA to assume multiple requests made within 30 days have been made to avoid fees.

V. Certain Findings

We have determined that the amendments mandated by the Improvement Act involve agency management and technical changes. Therefore, the amendments do not constitute a rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 551, 553(a)(2). Under the APA, the public may participate in the promulgation of rules that have a substantial impact on the public. The amendments to our regulations relate to agency management and technical changes only and are required by statute, and therefore, do not require public participation.

Even if these amendments were a rulemaking under 5 U.S.C. 551, 553(a)(2) of the APA, we have determined that notice and public comment are unnecessary and contrary to the public interest. Under 5 U.S.C. 553(b)(B) of the APA, an agency may publish regulations in final form when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to public interest. The proposed amendments are required by statute, are not a matter of agency discretion, and provide additional protections to the public through the existing regulations. Thus, notice and public procedure are impracticable, unnecessary, and contrary to the public interest.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System (System), considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 602

Courts, Freedom of information, Government employees.

As stated in the preamble, part 602 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 602—RELEASING INFORMATION

■ 1. The authority citation for part 602 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.59 of 92–181, 85 Stat. 583 (12 U.S.C. 2243, 2252, 2277a–8);

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[1] Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90–23, sec. 1, June 5, 1967, 81 Stat. 54; Pub. L. 93–502, secs. 1–3, Nov. 21, 1974, 88 Stat. 1561–1564; Pub. L. 94–409, sec. 5(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95–454, title IX, sec. 906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 98–620, title IV, sec. 402(2), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99–570, title I, secs. 1802, 1803, Oct. 27, 1986, 100 Stat. 3207–48, 3207–49; Pub. L. 104–231, secs. 3–11, Oct. 2, 1996, 110 Stat. 3049–3054; Pub. L. 107–306, title III, sec. 312, Nov. 27, 2002, 116 Stat. 2390; Pub. L. 110–175, secs. 3, 4(a), 5, 6(a)(1), (b)(1), 7(a), 8–10(a), 12, Dec. 31, 2007, 121 Stat. 2525–2530; Pub. L. 111–83, title V, sec. 564(b), Oct. 28, 2009, 123 Stat. 2184.

[2] Pub. L. 114–185, June 30, 2016.

5 U.S.C. 301, 552; 52 FR 10012; E.O. 12600; 52 FR 23781, 3 CFR 1987, p. 235.

Subpart B—Availability of Records of the Farm Credit Administration

■ 2. Section 602.8 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 602.8 Appeals.

(a) *How to appeal.* You may appeal a total or partial denial of your FOIA request within 90 calendar days of the date of the denial letter. Your appeal must be in writing and addressed to the Director, Office of Agency Services (OAS), Farm Credit Administration. You may send it:

(1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102–5090;

(2) By facsimile to (703) 893–2608; or

(3) By Email to *foiaappeal@fca.gov.*

You also have the right to seek dispute resolution services from FCA's FOIA Public Liaison and the Office of Government Information Services.

* * * * *

(d) *How to seek dispute resolution services.* Requesters may seek dispute resolution services from:

(1) FCA's FOIA Public Liaison;

(i) By mail addressed to FOIA Public Liaison, 1501 Farm Credit Drive, McLean, Virginia 22101–5090;

(ii) By facsimile at 703–790–3260; or

(iii) By Email at *FOIAPublicLiaison@fca.gov.*

(2) Office of Government Information Services;

(i) By mail to Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland, 20740–6001;

(ii) By facsimile at (202) 741–5769; or

(iii) By Email at *ogis@nara.gov.*

Subpart C—FOIA Fees

■ 3. Section 602.12 is amended by adding paragraphs (f), (g) and (h) to read as follows:

§ 602.12 Fees.

* * * * *

(f) We will not assess fees if we fail to comply with any time limit under the FOIA or these regulations, and have not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely, written notice is given to the requester, we may be excused an additional 10 working days before fees are automatically waived under this paragraph.

(g) If we determine that unusual circumstances apply and more than 5,000 pages are necessary to respond to a request, we may charge fees if we provided a timely, written notice to the requester and discussed with the requester via mail, Email, or telephone (or made at least three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(h) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

■ 4. Section 602.16 is revised to read as follows:

§ 602.16 Combining requests.

You may not avoid paying fees by filing multiple requests at the same time. When FCA reasonably believes that you, alone or with others, are breaking down one request into a series of requests to avoid fees, we will combine the requests and charge accordingly.

Dated: September 9, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–22107 Filed 9–14–16; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AG61

Disaster Assistance Loan Program; Disaster Loan Credit and Collateral Requirements

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: On April 25, 2014, the Small Business Administration (SBA) published in the **Federal Register** an interim final rule amending its disaster loan program regulations in response to Hurricane Sandy Rebuilding Task Force recommendations. The first change allowed SBA to rely on the disaster loan applicant's credit, including credit score, rather than personal or business cash flow in order to assess repayment ability for those applicants with strong credit. The second change increased the amount of disaster assistance funds that can be immediately disbursed to borrowers by raising the unsecured threshold for economic injury loans for all disasters and for physical damage loans for major disasters. SBA received no comments on its interim final rule; therefore, SBA adopts the interim final rule without change.

DATES: This final rule is effective September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Eric Wall, Office of Disaster Assistance, 409 3rd St. SW., Washington, DC 20416, (202) 205–6739.

SUPPLEMENTARY INFORMATION:

I. Background

The Hurricane Sandy Rebuilding Task Force was established pursuant to an Executive Order issued on December 7, 2012, E.O. 13632, Establishing the Hurricane Sandy Task Force (December 7, 2012). This Task Force was established to ensure the recovery effort benefitted from cabinet-level focus and coordination, and was charged with establishing guidelines for the investment of Federal funds made available for the recovery. As a member of this task force, SBA collaborated with these executive agencies and offices to identify and work to remove obstacles to resilient rebuilding while taking into account existing and future risks and promoting the long-term sustainability of communities and ecosystems in the Sandy-affected region.

As a result of Task Force recommendations, SBA published an interim final rule on April 25, 2014 (79 FR 22859). The rule amended 13 CFR 123.6 of SBA regulations to allow SBA to rely on a disaster applicant's credit, including score, as evidence of repayment ability. This change allowed SBA to expedite processing of applications from disaster victims with strong credit by removing the requirement to analyze cash flow for all loans. The interim final rule also revised 13 CFR 123.11 to increase SBA's unsecured disaster loan limit to $25,000 for economic injury loans for all disasters and for physical damage loans for major disasters. The comment period for the interim final rule ended on June 23, 2014, and SBA received no comments.

Compliance with Executive Orders 12866, 12988, 13132, and 13563 and the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have preemptive or retroactive effect.

Executive Order 13132

For the purposes of Executive Order 13132, this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, SBA determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Executive 13563

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 also requires that regulations be based on the open exchange of information and perspectives among state and local officials, affected stakeholders in the private sector, and the public as a whole.

In developing the interim final rule, SBA collaborated with multiple agencies through its participation on Hurricane Sandy Rebuilding Task Force. The Task Force was led by the Secretary of Housing and Urban Development, and included twenty-three executive department agencies and offices. The Task Force worked with these Federal agency members as well as state and local officials to identify areas where immediate steps could be taken to help communities recovering from Hurricane Sandy. Executive Order 13563 also recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. SBA had identified revisions to § 123.6 to expedite approval of disaster loans based on credit score as a part of its retrospective review. As stated in that report, an analysis of the performance of disaster loans to borrowers with strong credit indicated limited risk. Changing the current process of requiring a cash flow analysis for all loan applications has allowed SBA more flexibility to utilize a loan approval process that is in line with current private sector practices and reduce the processing cost for disaster loans.

Paperwork Reduction Act (44 U.S.C. Ch. 35)

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule does not impose any new reporting or recordkeeping requirements.

Regulatory Flexibility Act (5 U.S.C. 601–612)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 requires administrative agencies to consider the effect of their actions on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA allows an agency to certify a rule in lieu of preparing an analysis if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

While this rule will affect all future applicants for disaster assistance, some of which would be small entities, it does not impose any requirements on small entities. It streamlines SBA's processes in order to enable the Agency to provide disaster assistance more quickly and efficiently to small entities. SBA is not a small entity. As such, SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses, Terrorism.

Authority and Issuance

■ Accordingly, for the reasons set forth above, the interim final rule published at 79 FR 22859 (April 25, 2014) is adopted as a final rule without change.

Dated: August 26, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–21512 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0077; Directorate Identifier 2013–NM–254–AD; Amendment 39–18645; AD 2016–18–14]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain ATR—GIE Avions de Transport Régional Model ATR42–500 and Model ATR72–212A airplanes. This AD was prompted by a report indicating that interference occurred between a Type III Emergency Exit door and the surrounding passenger cabin furnishing during a production check. This AD requires measuring the gap between the Type III Emergency Exit doors and certain overhead stowage compartment fittings; removing certain fittings from the overhead stowage compartments and measuring the gap between the Type III Emergency Exit doors and the overhead stowage compartment hooks, if necessary; re-installing or repairing, as applicable, the Type III Emergency Exit doors; and modifying the overhead stowage compartments. We are issuing this AD to prevent interference between a Type III Emergency Exit door and the overhead stowage compartment fitting installed on the rail, which could result in obstructed opening of a Type III Emergency Exit door during an emergency evacuation.

DATES: This AD is effective October 20, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 20, 2016.

ADDRESSES: For service information identified in this final rule, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–

1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0077.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0077; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain ATR—GIE Avions de Transport Régional Model ATR42–500 and Model ATR72–212A airplanes. The SNPRM published in the **Federal Register** on May 12, 2016 (81 FR 29511) (“the SNPRM”). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on January 23, 2015 (80 FR 3531) (“the NPRM”). The NPRM proposed to require measuring the gap between the Type III Emergency Exit doors and certain overhead stowage compartment fittings; removing certain fittings from the overhead stowage compartments and measuring the gap between the Type III Emergency Exit doors and the overhead stowage compartment hooks, if necessary; and re-installing or repairing, as applicable, the Type III Emergency Exit doors. The SNPRM proposed to add requirements for modifying the overhead stowage compartments (including removing the hooks and fittings from the lateral rails) and re-identifying the overhead stowage compartments with new part numbers. We are issuing this AD to prevent interference between a Type III Emergency Exit door and the overhead stowage compartment fitting installed on the rail, which could result in obstructed opening of a Type III Emergency Exit door during an emergency evacuation.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0018, dated February 5, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition on certain ATR—GIE Avions de Transport Régional Model ATR42–500 and Model ATR72–212A airplanes. The MCAI states:

> Interference between a Type III Emergency Exit door opening and surrounding passenger cabin furnishing was detected during a production check.
>
> Subsequent investigation identified an insufficient gap between the emergency exit door internal skin structure and the overhead stowage compartment fitting, installed on the rail, as a cause of the interference.
>
> This condition, if not detected and corrected, could prevent an unobstructed opening of both Type III Emergency Exit doors in case of emergency evacuation.
>
> Prompted by this finding, EASA issued AD 2013–0280 to require a one-time check of the gap between the Type III Emergency Exit door internal skin and a relevant fitting and, depending on findings, the accomplishment of applicable corrective action(s). That [EASA] AD was considered to be a temporary measure.
>
> Since that [EASA] AD was issued, ATR developed a design solution to ensure that no interference with surrounding structure occurs during opening of an emergency exit. ATR Service Bulletins (SB) ATR42–25–0185, SB ATR42–25–0186, SB ATR72–25–1148 and SB ATR72–25–1149 were issued to provide the necessary modification instructions for in-service aeroplanes. For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013–0280, which is superseded, and requires modification of the overhead bin attachment adjacent to the Type III emergency exit doors [The modification includes removing the hooks and fittings from the lateral rails and re-identifying the overhead stowage compartments].

Required actions include an additional measurement of the gap between the internal skin and overhead stowage compartment hooks of both Type III Emergency Exits, if necessary. Corrective actions include re-installing the Type III Emergency Exit doors and doing a repair. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0077.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

Related Service Information Under 1 CFR Part 51

Avions de Transport Régional Service has issued the following service information:

- ATR Service Bulletin ATR42 25–0180, dated August 19, 2013, which describes procedures for, among other things, removing certain fittings from the overhead stowage compartments, measuring the gap between the Type III Emergency Exit doors and the overhead stowage compartment hooks, re-installing the Type III Emergency Exit doors, and repairing the Type III Emergency Exit doors.
- ATR Service Bulletin ATR72 25–1141, dated August 19, 2013, which describes procedures for, among other things, removing certain fittings from the overhead stowage compartments, measuring the gap between the Type III Emergency Exit doors and the overhead stowage compartment hooks, and re-installing the Type III Emergency Exit doors.
- ATR Service Bulletin ATR42–25–0185, dated November 21, 2014, which describes procedures for modifying the overhead stowage compartments.
- ATR Service Bulletin ATR42–25–0186, dated November 21, 2014, which describes procedures for modifying the overhead stowage compartments.
- ATR Service Bulletin ATR72–25–1148, dated November 21, 2014, which describes procedures for modifying the overhead stowage compartments.
- ATR Service Bulletin ATR72–25–1149, dated November 21, 2014, which describes procedures for modifying the overhead stowage compartments.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,360, or $340, or per product.

In addition, we estimate that any necessary follow-on actions will take about 1 work-hour for a cost of $85 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–18–14 ATR—GIE Avions de Transport Régional: Amendment 39–18645; Docket No. FAA–2015–0077; Directorate Identifier 2013–NM–254–AD.

(a) Effective Date

This AD is effective October 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) ATR—GIE Avions de Transport Régional Model ATR42–500 airplanes, all manufacturer serial numbers (MSNs) on which ATR Modification 6518 has been embodied in production, except those airplanes on which ATR Modification 7294 has been embodied in production.

(2) ATR—GIE Avions de Transport Régional Model ATR72–212A airplanes on which ATR Modification 6517 has been embodied in production, except those airplanes on which ATR Modification 7294 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by a report indicating that interference occurred between a Type III Emergency Exit door and the surrounding passenger cabin furnishing during a production check. We are issuing this AD to prevent interference between a Type III Emergency Exit door and the overhead stowage compartment fitting installed on the rail; which could result in obstructed opening of a Type III Emergency Exit door during an emergency evacuation.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Measurement of Gap Between Type III Emergency Exit Doors and Certain Overhead Stowage Compartment Fittings

For all airplanes, except those airplanes on which ATR Modification 7152 has been embodied in production and except airplanes having MSN 1002, 1005, 1089, 1094, 1095, 1097, 1098, 1099, 1100, 1101, or 1102: Within 2 months after the effective date of this AD, measure the gap between each Type III Emergency Exit door, left-hand (LH) and right-hand (RH), and the overhead stowage compartment fitting installed on the rail by unlocking and slightly rotating the LH and RH Type III Emergency Exit doors with the doors remaining on the lower fittings. Use a shim gauge 6 millimeters (mm) (0.236 inch) thick, to measure the gap between the internal skin of the doors and the relevant fittings, part numbers (P/N) S2522924620000 (LH fitting) and P/N S2522924620100 (RH fitting).

Note 1 to paragraph (g) of this AD: Illustrations may be found in the applicable ATR Illustrated Parts Catalog (IPC) 25–23–02, figure 87, item 90/100.

Note 2 to paragraph (g) of this AD: It might be necessary to pull on the door blanket to correctly see the door internal skin.

(h) Re-Installation of Type III Emergency Exit Doors

During the measurement required by paragraph (g) of this AD, if it is determined that there is a gap equal to or greater than 6 mm (0.236 inch): Before further flight, re-install the LH and RH Type III Emergency Exit Doors, in accordance with paragraph 3.C.(1)(d) of the Accomplishment Instructions of ATR Service Bulletin ATR42–25–0180, dated August 19, 2013; or ATR Service Bulletin ATR72–25–1141, dated August 19, 2013; as applicable.

(i) Removal of Fitting and Measurement of Gap Between Door Internal Skin and Overhead Stowage Compartment Hooks

During the measurement required by paragraph (g) of this AD, if it is determined that there is a gap less than 6 mm (0.236 inch): Before further flight, remove the fitting having P/N S2522924620000 (LH fitting) or P/N S2522924620100 (RH fitting), and measure the gap between the internal skin of the LH and RH Type III Emergency Exit doors and the overhead stowage compartment hooks, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–25–0180, dated August 19, 2013; or ATR72–25–1141, dated August 19, 2013; as applicable.

(1) If, during the measurement required by paragraph (i) of this AD, it is determined that there is a gap equal to or greater than 6 mm (0.236 inch): Before further flight, re-install the LH and RH Type III Emergency Exit Doors, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–25–0180, dated August 19, 2013; or ATR72–25–1141, dated August 19, 2013; as applicable.

(2) If, during the measurement required by paragraph (i) of this AD, it is determined that there is a gap less than 6 mm (0.236 inch): Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA).

(j) Modification of Overhead Stowage Compartments and Re-Identification of Part Number

Within 4 months after the effective date of this AD: Modify the overhead stowage compartments, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (j)(1) through (j)(4) of this AD.

(1) For airplanes identified in ATR Service Bulletin ATR42–25–0185, dated November 21, 2014: ATR Service Bulletin ATR42–25–0185, dated November 21, 2014.

(2) For airplanes identified in ATR Service Bulletin ATR42–25–0186, dated November 21, 2014: ATR Service Bulletin ATR42–25–0186, dated November 21, 2014.

(3) For airplanes identified in ATR Service Bulletin ATR72–25–1148, dated November 21, 2014: ATR Service Bulletin ATR72–25–1148, dated November 21, 2014.

(4) For airplanes identified in ATR Service Bulletin ATR72–25–1149, dated November 21, 2014: ATR Service Bulletin ATR72–25–1149, dated November 21, 2014.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0018, dated February 5, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0077.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) ATR Service Bulletin ATR42–25–0180, dated August 19, 2013.

(ii) ATR Service Bulletin ATR42–25–0185, dated November 21, 2014.

(iii) ATR Service Bulletin ATR42–25–0186, dated November 21, 2014.

(iv) ATR Service Bulletin ATR72–25–1141, dated August 19, 2013.

(v) ATR Service Bulletin ATR72–25–1148, dated November 21, 2014.

(vi) ATR Service Bulletin ATR72–25–1149, dated November 21, 2014.

(3) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 25, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–21292 Filed 9–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6550; Directorate Identifier 2013–NM–162–AD; Amendment 39–18638; AD 2016–18–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 90–11–05 for certain Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes and Model A300 B4–600 series airplanes. AD 90–11–05 required repetitive detailed inspections for cracking in the aft hinge brackets of the outer shroud box that is located in the outer wing box, and related investigative and corrective actions if necessary. This new AD changes certain compliance times and adds airplanes to the applicability. This AD was prompted by reports of cracks in the aft hinge brackets of the outer shroud box that is located in the outer wing box, which were found during routine maintenance checks, and our subsequent determination that a change in inspection compliance times is needed. We are issuing this AD to detect and correct cracking of the aft hinge brackets of the outer shroud box; such cracking could affect the structural integrity of the airplane.

DATES: This AD becomes effective October 20, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 20, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6550.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6550; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA

98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 90–11–05, Amendment 39–6603 (89–NM–223–AD) (55 FR 20129, May 15, 1990) (“AD 90–11–05”). AD 90–11–05 applied to certain Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4 203 airplanes and Model A300 B4–600 series airplanes. The NPRM published in the **Federal Register** on December 14, 2015 (80 FR 77279) (“the NPRM”). The NPRM was prompted by a determination that a change to certain compliance times is needed. The NPRM proposed to continue to require doing repetitive detailed inspections for cracking in the hinge brackets of the forward and aft outer shroud boxes that are located in the outer wing box, and related investigative and corrective actions if necessary. The NPRM also proposed to change certain compliance times and add airplanes to the applicability. We are issuing this AD to detect and correct cracking of the aft hinge brackets of the outer shroud box; such cracking could affect the structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0181R1, dated August 20, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Model A300 series airplanes and Model A300 B4–600 series airplanes. The MCAI states:

> In the past, aft hinge brackets of the outer wing box were found cracked. Fracture of a bracket would allow vertical movement of the inner shroud box structure, which could result in damage to the top skin of the inboard flap. In addition, the loads carried by the brackets will be transferred to the remaining supports, which may also crack and cause extensive structural damage.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> To address this potential unsafe condition, DGAC [Direction Générale de l’Aviation Civile] France issued * * * [an airworthiness directive] (later revised) to require repetitive inspections of the hinge bracket of the outer box and, depending on findings, corrective action(s).
>
> Since that [DGAC] AD was issued, a fleet survey and updated Fatigue and Damage Tolerance analysis were performed in order to substantiate the A300 Extended Service Goal (ESG) and A300–600 Extended Service Goal (ESG2) exercise.
>
> The results of these analyses led to a change in the inspection thresholds and intervals in Flight Cycles (FC) and the introduction of Flight Hours (FH) limits.
>
> For the reasons described above, this [EASA] AD retains the requirements of DGAC France * * * [an airworthiness directive], which is superseded, but requires those actions within the new thresholds and intervals given by Airbus Service Bulletin (SB) A300–57–0142 Revision 04 or A300–57–6010 Revision 05, as applicable to aeroplane model.
>
> Revision 1 of this [EASA] AD is issued to add model A300 B4–203 aeroplanes to the applicability and compliance time tables. This model is covered by Airbus SB A300–57–0142, but was mistakenly omitted from the original [EASA] AD issue.

The corrective action for a hinge bracket that is cracked or fractured is replacing the damaged hinge bracket with a new bracket.

For airplanes on which a crack is found in one half bracket or both half brackets, related investigative actions include a general visual inspection for secondary damage (*e.g.,* cracks, wear damage, pitting, and gouging) in the following areas:

- The inner shroud-box forward attachments and the attachment brackets at the inboard end.
- The inner and outer shroud-box structure, adjacent to the fractured bracket.
- The top skin of the inboard flap.

The corrective action for damage findings during the related investigative action is repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus’s EASA Design Organization Approval (DOA).

The compliance time for related investigative actions and corrective actions is before further flight.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6550.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA’s response to the comment.

Request To Exclude Certain Airplanes From the Applicability

FedEx requested that we exclude from the proposed applicability airplanes on which the actions specified in Airbus Service Bulletin A300–57–6011, Revision 2, dated July 10, 1989, have been accomplished. FedEx stated that it has accomplished the optional terminating actions provided in paragraph (j)(1) of the proposed AD, and specified in Airbus Service Bulletin A300–57–6011, Revision 2, dated July 10, 1989, on several of its airplanes.

We disagree with FedEx’s request. As of the effective date of this AD, additional actions are required for airplanes on which the optional modification has been accomplished. These airplanes will need to have a one-time detailed visual inspection of the forward and aft outer shroud box with no cracking found, as required by paragraph (j)(2) of this AD. We have not changed this AD in this regard.

Changes Made to This AD

In paragraph (j)(2) of the proposed AD, we proposed to provide an optional method of compliance (*i.e.,* a replacement and a one-time inspection) for actions specified in paragraph (g) of the proposed AD. We also proposed to give credit in paragraph (k)(2) of the proposed AD for replacements accomplished before the effective date of this AD using the same service information identified in paragraph (j)(2) of the AD:

- Airbus Service Bulletin A300–57–143, dated December 17, 1986.
- Airbus Service Bulletin A300–57–143, Revision 1, dated March 19, 1987.
- Airbus Service Bulletin A300–57–6011, dated December 17, 1986.
- Airbus Service Bulletin A300–57–6011, Revision 1, dated March 19, 1987.

Since we cannot make this service information reasonably available, we have revised paragraph (j)(2) of the proposed AD, removed redundant paragraph (k)(2) of the proposed AD from this AD, and redesignated paragraph (k)(1) and subsequent subparagraphs accordingly. We revised paragraph (j)(2) of this AD by removing the references to the service information and instead specified that operators must do the replacement using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus’s EASA Design Organization Approval (DOA).

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information.

- Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011, which describes procedures for doing an inspection of the forward and aft hinge brackets on the outer shroud box.
- Airbus Service Bulletin A300–57–143, Revision 2, dated July 10, 1989, which describes procedures for replacing the aft aluminum alloy brackets on the outer shroud box with new steel brackets.
- Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011, which describes procedures for doing an inspection of the forward and aft hinge brackets on the outer shroud box.
- Airbus Service Bulletin A300–57–6011, Revision 2, dated July 10, 1989, which describes procedures for replacing the aft aluminum alloy brackets on the outer shroud box with new steel brackets.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 3 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle.	$2,040 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	27 work-hours × $85 per hour = $2,295	$25,650	$27,945

We have received no definitive data that would enable us to provide cost estimates for the on-condition related investigative and corrective actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 90–11–05, Amendment 39–6603 (89–NM–223–AD) (55 FR 20129, May 15, 1990), and adding the following new AD:

2016–18–08 Airbus: Amendment 39–18638. Docket No. FAA–2015–6550; Directorate Identifier 2013–NM–162–AD.

(a) Effective Date

This AD becomes effective October 20, 2016.

(b) Affected ADs

This AD replaces AD 90–11–05, Amendment 39–6603 (89–NM–223–AD) (55 FR 20129, May 15, 1990).

(c) Applicability

This AD applies to Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; and Model A300 B4–605R airplanes; certificated in any category; except airplanes on which Airbus Modification 6661 has been embodied during production.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of cracks in the aft hinge brackets of the outer shroud box that is located in the outer wing box, which were found during routine maintenance checks, and our subsequent determination that a change in inspection compliance times is needed. We are issuing this AD to detect and correct cracking of the aft hinge brackets of the outer shroud box; such cracking could affect the structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

At the applicable compliance time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Do a detailed inspection for cracks and fractures of the hinge brackets of the forward and aft outer shroud boxes, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011; or Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011; as applicable. Repeat the inspection thereafter at the applicable interval specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011; or Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011; as applicable. Doing the replacement specified in paragraph (j) of this AD terminates the repetitive inspections required by this paragraph.

(1) For Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–2C, and B4–203 airplanes: Do the inspection at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 2,000 flight hours, whichever occurs first.

(i) Before the accumulation of 5,000 flight cycles or 10,400 flight hours since first flight, whichever occurs first.

(ii) Within 100 flight cycles after the effective date of this AD.

(2) For Model A300 B2–1C, B2–203, and B2K–3C airplanes: Do the inspection at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 1,000 flight hours, whichever occurs first.

(i) Before the accumulation of 5,000 flight cycles or 5,400 flight hours since first flight, whichever occurs first.

(ii) Within 100 flight cycles after the effective date of this AD.

(3) For Model A300 B4–103 airplanes: Do the inspection at the later of the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 1,300 flight hours, whichever occurs first.

(i) Before the accumulation of 5,000 flight cycles or 6,600 flight hours since first flight, whichever occurs first.

(ii) Within 100 flight cycles after the effective date of this AD.

(h) Corrective Action

If any crack or fracture is found during any inspection required by paragraph (g) of this AD: Before further flight, replace the damaged hinge bracket with a new bracket, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–143, Revision 2, dated July 10, 1989; or Airbus A300–57–6011, Revision 2, dated July 10, 1989; as applicable.

(i) Related Investigative and Corrective Actions

If any crack or fracture is found during any inspection required by paragraph (g) of this AD: Before further flight, do a general visual inspection for secondary damage (*e.g.*, cracks, wear damage, pitting, and gouging) in the areas specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011; or Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011; as applicable. If any damage is found, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(1) The inner shroud-box forward attachments and the attachment brackets at the inboard end.

(2) The inner and outer shroud-box structure, adjacent to the fractured bracket.

(3) The top skin of the inboard flap.

(j) Optional Terminating Action for Inspection Requirements of Paragraph (g) of This AD

(1) Replacement of the hinge bracket, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–143, Revision 2, dated July 10, 1989 (for Model A300 series airplanes); or Airbus Service Bulletin A300–57–6011, Revision 2, dated July 10, 1989; as applicable; terminates the inspection requirements of paragraph (g) of this AD (for Model A300 B4–600 series airplanes).

(2) Replacement of a hinge bracket before the effective date of this AD terminates the repetitive inspections required by paragraph (g) of this AD, provided that after the hinge bracket replacement, but before further flight after the effective date of this AD, a one-time detailed inspection of the forward and aft outer shroud box has been done with no cracking found, in accordance with paragraph (g) of this AD. The replacement must be done in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(k) Credit for Previous Actions

This paragraph provides credit for inspections required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using any of the applicable service information listed in paragraphs (k)(1) through (k)(8) of this AD.

(1) Airbus Service Bulletin A300–57–142, dated December 17, 1986.

(2) Airbus Service Bulletin A300–57–142, Revision 1, dated April 9, 1990.

(3) Airbus Service Bulletin A300–57–142, Revision 2, dated January 16, 1991.

(4) Airbus Service Bulletin A300–57–0142, Revision 03, dated February 22, 1999.

(5) Airbus Service Bulletin A300–57–6010, Revision 1, dated December 14, 1990.

(6) Airbus Service Bulletin A300–57–6010, Revision 02, dated March 30, 1998.

(7) Airbus Service Bulletin A300–57–6010, Revision 03, dated September 16, 1998.

(8) Airbus Service Bulletin A300–57–6010, Revision 04, dated February 22, 1999.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0181R1, dated August 20, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6550.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011.

(ii) Airbus Service Bulletin A300–57–143, Revision 2, dated July 10, 1989. Pages 1, 3, 4, 7, 10, 13, and 14 of this document are identified as Revision 2, dated July 10, 1989; pages 2 and 8 are identified as original, dated December 12, 1986; and pages 5, 6, 9, 11, 12, and 15 are identified as Revision March 19, 1987.

(iii) Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011.

(iv) Airbus Service Bulletin A300–57–6011, Revision 2, dated July 10, 1989. Pages 1, 2, 5, 7, 8, 11, and 12 of this document are identified as Revision 2, dated July 10, 1989; pages 3, 4, and 13 are identified as Revision 1, dated March 19, 1987; and pages 6, 9, 10 are identified as original, dated December 17, 1986.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 24, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–21146 Filed 9–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3781; Directorate Identifier 2015–SW–048–AD; Amendment 39–18649; AD 2016–18–18]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109A, A109A II, A109C, A109E, A109K2, A109S, and AW109SP helicopters. This AD requires visually inspecting the tail rotor drive shaft assembly (drive shaft) for a crack. This AD was prompted by the discovery of three cracks on the drive shaft of a Model A109S helicopter. The actions of this AD are intended to detect a crack on the drive shaft to prevent failure of the driveshaft, failure of the tail rotor, and subsequent loss of helicopter control.

DATES: This AD is effective October 20, 2016.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of October 20, 2016.

ADDRESSES: For service information identified in this final rule, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3781.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3781; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Martin R. Crane, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *martin.r.crane@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 22, 2016, at 81 FR 15171, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Agusta S.p.A. Model A109A, A109A II, A109C, A109E, A109K2, A109S, and AW109SP helicopters with a drive shaft part number (P/N) 109–8412–02–1 or 109–8412–02–3 installed. The NPRM proposed to require visually inspecting the drive shaft for a crack. The proposed requirements were intended to detect a crack on the drive shaft to prevent failure of the driveshaft, failure of the tail rotor, and subsequent loss of helicopter control.

The NPRM was prompted by AD No. 2015–0054, dated March 27, 2015, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for the Model A109A with retrofit kit P/N 109–0820–27–101 installed, and Model A109A II, A109C, A109E, A109K2, A109LUH, A109S, and AW109SP helicopters.

EASA advises that during scheduled maintenance on a Model A109S helicopter, three cracks were found on the drive shaft. An investigation could not determine the cause of the cracking but concluded it could not have been caused by fatigue. This condition, if not detected and corrected, could lead to tail rotor failure, possibly resulting in loss of helicopter control, EASA advises. EASA AD No. 2015–0054 consequently requires a one-time inspection of the drive shaft, and replacing the drive shaft if cracks are found.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (81 FR 15171, March 22, 2016).

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Interim Action

We consider this AD to be an interim action. The design approval holder has not determined the cause of the unsafe condition identified in this AD. If a cause is determined and actions developed to address the cause, we might consider additional rulemaking.

Differences Between This AD and the EASA AD

The EASA AD applies to Agusta Model A109LUH helicopters. This AD does not because this model does not have an FAA type certificate.

Related Service Information Under 1 CFR Part 51

We reviewed AgustaWestland Bollettino Tecnico (BT) No. 109–147 for Model A109A helicopters with retrofit kit P/N 109–0820–27–101 installed, Model A109A II, and Model A109C helicopters; BT No. 109EP–143 for Model A109E helicopters; BT No. 109K–68 for Model A109K2 helicopters; BT No. 109S–067 for Model A109S helicopters; and BT No. 109SP–094 for Model AW109SP helicopters. All of the BTs are dated March 25, 2015. AgustaWestland reports that during a scheduled servicing of an A109S helicopter, three cracks were found on drive shaft, P/N 109–8412–02–1. The BTs prescribe a one-time drive shaft inspection for cracks.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 142 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

- Inspecting the drive shaft requires 9 work-hours and no parts. The estimated cost is $765 per helicopter and $108,630 for the U.S. fleet.
- Replacing the drive shaft requires no additional labor hours. Parts cost $6,082 per helicopter.

According to Agusta service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Agusta. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on helicopters identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–18–18 Agusta S.p.A.: Amendment 39–18649; Docket No. FAA–2015–3781; Directorate Identifier 2015–SW–048–AD.

(a) Applicability

This AD applies to Agusta S.p.A. Model A109A, A109A II, A109C, A109E, A109K2, A109S, and AW109SP helicopters with a tail rotor drive shaft assembly (drive shaft) part number 109–8412–02–1 or 109–8412–02–3 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a drive shaft. This condition could result in failure of a drive shaft, failure of the tail rotor, and subsequent loss of helicopter control.

(c) Effective Date

This AD becomes October 20, 2016.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 50 hours time-in-service:

(1) Visually inspect each drive shaft in accordance with the Compliance Instructions, paragraph 4, of AgustaWestland Bollettino Tecnico (BT) No. 109–147, dated March 25, 2015; BT No. 109EP–143, dated March 25, 2015; BT No. 109K–68, dated March 25, 2015; BT No. 109S–067, dated March 25, 2015; or BT No. 109SP–094, dated March 25, 2015, as applicable for your model helicopter.

(2) If there is a crack, replace the drive shaft before further flight.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Martin R. Crane, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0054, dated March 27, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–3781.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6510, Tail Rotor Drive Shaft.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) AgustaWestland Bollettino Tecnico No. 109–147, dated March 25, 2015.

(ii) AgustaWestland Bollettino Tecnico No. 109EP–143, dated March 25, 2015.

(iii) AgustaWestland Bollettino Tecnico No. 109K–68, dated March 25, 2015.

(iv) AgustaWestland Bollettino Tecnico No. 109S–067, dated March 25, 2015.

(v) AgustaWestland Bollettino TecnicoNo. 109SP–094, dated March 25, 2015.

(3) For Agusta S.p.A. service information identified in this final rule, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on September 1, 2016.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–21707 Filed 9–14–16; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of comparability determination for margin requirements for uncleared swaps under the laws of Japan.

SUMMARY: The following is the analysis and determination of the Commodity Futures Trading Commission ("Commission") regarding a request by the Japan Financial Services Agency ("JFSA") that the Commission determine that laws and regulations applicable in Japan provide a sufficient basis for an affirmative finding of comparability with respect to margin requirements for uncleared swaps applicable to certain swap dealers ("SDs") and major swap participants ("MSPs") registered with the Commission. As discussed in detail herein, with one exception, the Commission has found the margin requirements for uncleared swaps under the laws and regulations of Japan comparable to those under the Commodity Exchange Act ("CEA") and Commission regulations.

DATES: This determination is effective September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Eileen T. Flaherty, Director, 202–418–5326, *eflaherty@cftc.gov,* or Frank N. Fisanich, Chief Counsel, 202–418–5949, *ffisanich@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to section 4s(e) of the CEA,[1] the Commission is required to promulgate margin requirements for uncleared swaps applicable to each SD and MSP for which there is no Prudential Regulator (collectively, "Covered Swap Entities" or "CSEs").[2] The Commission published final margin requirements for such CSEs in January 2016 (the "Final Margin Rule").[3]

Subsequently, on May 31, 2016, the Commission published in the **Federal Register** its final rule with respect to the cross-border application of the Commission's margin requirements for uncleared swaps applicable to CSEs (hereinafter, the "Cross-Border Margin Rule").[4] The Cross-Border Margin Rule sets out the circumstances under which a CSE is allowed to satisfy the requirements under the Margin Rule by complying with comparable foreign margin requirements ("substituted compliance"); offers certain CSEs a limited exclusion from the Commission's margin requirements; and outlined a framework for assessing whether a foreign jurisdiction's margin requirements are comparable to the Final Margin Rule ("comparability determinations"). The Commission promulgated the Cross-Border Margin Rule after close consultation with the Prudential Regulators and in light of comments from and discussions with market participants and foreign regulators.[5]

On June 17, 2016, the JFSA (the "applicant") submitted a request that the Commission determine that laws and regulations applicable in Japan provide a sufficient basis for an affirmative finding of comparability with respect to the Final Margin Rule. The applicant provided Commission staff with an updated submission on July 26, 2016. On August 18, 2016, the application was further supplemented with corrections and additional materials. The Commission's analysis and comparability determination for Japan regarding the Final Margin Rule is detailed below.

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[1] 7 U.S.C. 1 *et. seq.*

[2] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term "Prudential Regulator" to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) ("Prudential Regulators' Final Margin Rule").

[3] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. *See* 17 CFR 23.150 through 23.159, and 23.161. The Commission's regulations are found in chapter I of Title 17 of the Code of Federal Regulations, 17 CFR 1 *et. seq.*

[4] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016). The Cross-Border Margin Rule, which became effective August 1, 2016, is codified in part 23 of the Commission's regulations. *See* 17 CFR 23.160.

[5] In 2014, in conjunction with re-proposing its margin requirements, the Commission requested comment on three alternative approaches to the cross-border application of its margin requirements: (i) A transaction-level approach consistent with the Commission's guidance on the cross-border application of the CEA's swap provisions, *see* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013) (the "Guidance"); (ii) an approach consistent with the Prudential Regulators' proposed cross-border framework for margin, *see* Margin and Capital Requirements for Covered Swap Entities, 79 FR 57348 (Sept. 24, 2014); and (iii) an entity-level approach that would apply margin rules on a firm-wide basis (without any exclusion for swaps with non-U.S. counterparties). *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 FR 59898 (Oct. 3, 2014). Following a review of comments received in response to this release, the Commission's Global Markets Advisory Committee ("GMAC") hosted a public panel discussion on the cross-border application of margin requirements. *See* GMAC Meeting (May 14, 2015), transcript and webcast available at *http://www.cftc.gov/PressRoom/Events/opaevent_gmac051415.*

II. Cross-Border Margin Rule

A. Regulatory Objective of Margin Requirements

The regulatory objective of the Final Margin Rule is to further the congressional mandate to ensure the safety and soundness of CSEs in order to offset the greater risk to CSEs and the financial system arising from the use of swaps that are not cleared.[6] The primary function of margin is to protect a CSE from counterparty default, allowing it to absorb losses and continue to meet its obligations using collateral provided by the defaulting counterparty. While the requirement to post margin protects the counterparty in the event of the CSE's default, it also functions as a risk management tool, limiting the amount of leverage a CSE can incur by requiring that it have adequate eligible collateral to enter into an uncleared swap. In this way, margin serves as a first line of defense not only in protecting the CSE but in containing the amount of risk in the financial system as a whole, reducing the potential for contagion arising from uncleared swaps.[7]

However, the global nature of the swap market, coupled with the interconnectedness of market participants, also necessitate that the Commission recognize the supervisory interests of foreign regulatory authorities and consider the impact of its choices on market efficiency and competition, which the Commission believes are vital to a well-functioning global swap market.[8] Foreign jurisdictions are at various stages of implementing margin reforms. To the extent that other jurisdictions adopt requirements with different coverage or timelines, the Commission's margin requirements may lead to competitive burdens for U.S. entities and deter non-U.S. persons from transacting with U.S. CSEs and their affiliates overseas.

B. Substituted Compliance

To address these concerns, the Cross-Border Margin Rule provides that, subject to certain findings and conditions, a CSE is permitted to satisfy the requirements of the Final Margin Rule by instead complying with the margin requirements in the relevant foreign jurisdiction. This substituted compliance regime is intended to address the concerns discussed above without compromising the congressional mandate to protect the safety and soundness of CSEs and the stability of the U.S. financial system. Substituted compliance helps preserve the benefits of an integrated, global swap market by reducing the degree to which market participants will be subject to multiple sets of regulations. Further, substituted compliance builds on international efforts to develop a global margin framework.[9]

Pursuant to the Cross-Border Margin Rule, any CSE that is eligible for substituted compliance under § 23.160[10] and any foreign regulatory authority that has direct supervisory authority over one or more CSEs and that is responsible for administering the relevant foreign jurisdiction's margin requirements may apply to the Commission for a comparability determination.[11]

The Cross-Border Margin Rule requires that applicants for a comparability determination provide copies of the relevant foreign jurisdiction's margin requirements[12] and descriptions of their objectives,[13] how they differ from the BCBS/IOSCO Framework,[14] and how they address the elements of the Commission's margin requirements.[15] The applicant must identify the specific legal and regulatory provisions of the foreign jurisdiction's margin requirements that correspond to each element and, if necessary, whether the relevant foreign jurisdiction's margin requirements do not address a particular element.[16]

C. Standard of Review for Comparability Determinations

The Cross-Border Margin Rule identifies certain key factors that the Commission will consider in making a comparability determination. Specifically, the Commission will consider the scope and objectives of the relevant foreign jurisdiction's margin requirements;[17] whether the relevant foreign jurisdiction's margin requirements achieve comparable outcomes to the Commission's corresponding margin requirements;[18] and the ability of the relevant regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's margin requirements.[19]

This process reflects an outcome-based approach to assessing the comparability of a foreign jurisdiction's margin requirements. Instead of demanding strict uniformity with the Commission's margin requirements, the Commission evaluates the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority. Recognizing that jurisdictions may adopt different approaches to achieving the same outcome, the Commission will focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements.

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[6] *See* 7 U.S.C. 6s(e)(3)(A).

[7] *See* Capital Requirements for Swap Dealers and Major Swap Participants, 76 FR 27802 (May 12, 2011).

[8] In determining the extent to which the Dodd-Frank swap provisions apply to activities overseas, the Commission strives to protect U.S. interests, as determined by Congress in Title VII, and minimize conflicts with the laws of other jurisdictions, consistent with principles of international comity. *See* Guidance, 78 FR at 45300–45301 (referencing the Restatement (Third) of Foreign Relations Law of the United States).

[9] In October 2011, the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO"), in consultation with the Committee on Payment and Settlement Systems and the Committee on Global Financial Systems, formed a Working Group on Margining Requirements to develop international standards for margin requirements for uncleared swaps. Representatives of 26 regulatory authorities participated, including the Commission. In September 2013, the WGMR published a final report articulating eight key principles for non-cleared derivatives margin rules. These principles represent the minimum standards approved by BCBS and IOSCO and their recommendations to the regulatory authorities in member jurisdictions. *See* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (updated March 2015) ("BCBS/IOSCO Framework"), available at *http://www.bis.org/bcbs/publ/d317.pdf.*

[10] *See* 17 CFR 23.160(c)(1)(i).

[11] *See* 17 CFR 23.160(c)(1)(ii).

[12] *See* 17 CFR 23.160(c)(2)(v).

[13] *See* 17 CFR 23.160(c)(2)(i).

[14] *See* 17 CFR 23.160(c)(2)(iii). *See also* 17 CFR 23.160(a)(3) (defining "international standards" as based on the BCBS–ISOCO Framework).

[15] *See* 17 CFR 23.160(c)(2)(ii) (identifying the elements as: (A) The products subject to the foreign jurisdiction's margin requirements; (B) the entities subject to the foreign jurisdiction's margin requirements; (C) the treatment of inter-affiliate transactions; (D) the methodologies for calculating the amounts of initial and variation margin; (E) the process and standards for approving models for calculating initial and variation margin models; (F) the timing and manner in which initial and variation margin must be collected and/or paid; (G) any threshold levels or amounts; (H) risk management controls for the calculation of initial and variation margin; (I) eligible collateral for initial and variation margin; (J) the requirements of custodial arrangements, including segregation of margin and rehypothecation; (K) margin documentation requirements; and (L) the cross-border application of the foreign jurisdiction's margin regime). Section 23.160(c)(2)(ii) largely tracks the elements of the BCBS–IOSCO Framework but breaks them down into their components as appropriate to ensure ease of application.

[16] *See id.*

[17] *See* 17 CFR 23.160(c)(3)(i).

[18] *See* 17 CFR 23.160(c)(3)(ii). As discussed above, the Commission's Final Margin Rule is based on the BCBS/IOSCO Framework; therefore, the Commission expects that the relevant foreign margin requirements would conform to such Framework at minimum in order to be deemed comparable to the Commission's corresponding margin requirements.

[19] *See* 17 CFR 23.160(c)(3)(iii). *See also* 17 CFR 23.160(c)(3)(iv) (indicating the Commission would also consider any other relevant facts and circumstances).

In keeping with the Commission's commitment to international coordination on margin requirements for uncleared derivatives, the Commission believes that the standards it has established are fully consistent with the BCBS–IOSCO Framework.[20] Accordingly, where relevant to the Commission's comparability analysis, the BCBS/IOSCO Framework is discussed to explain certain internationally agreed concepts and, where appropriate, used as a baseline to compare provisions of the Final Margin Rule with those of the foreign jurisdiction.

The Cross-Border Margin Rule provided a detailed discussion regarding the facts and circumstances under which substituted compliance for the requirements under the Final Margin Rule would be available and such discussion is not repeated here. CSEs seeking to rely on substituted compliance based on the comparability determinations contained herein are responsible for determining whether substituted compliance is available under the Cross-Border Margin Rule with respect to the CSE's particular status and circumstances.

D. Conditions to Comparability Determinations

The Cross-Border Margin Rule provides that the Commission may impose terms and conditions it deems appropriate in issuing a comparability determination.[21] Specific terms and conditions with respect to margin requirements are discussed in the Commission's determinations detailed below.

As a general condition to all determinations, however, the Commission requires notification of any material changes to information submitted to the Commission by the applicant in support of a comparability finding, including, but not limited to, changes in the relevant foreign jurisdiction's supervisory or regulatory regime. The Commission also expects that the relevant foreign regulator will enter into, or will have entered into, an appropriate memorandum of understanding or similar arrangement with the Commission in connection with a comparability determination.[22]

Finally, the Commission will generally rely on an applicant's description of the laws and regulations of the foreign jurisdiction in making its comparability determination. The Commission considers an application to be a representation by the applicant that the laws and regulations submitted are in full force and effect, that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the swaps activities[23] of CSEs[24] in the relevant jurisdictions.[25] Further, the Commission expects that an applicant would notify the Commission of any material changes to information submitted in support of a comparability determination (including, but not limited to, changes in the relevant supervisory or regulatory regime) as, depending on the nature of the change, the Commission's comparability determination may no longer be valid.[26]

III. Margin Requirements for Swaps Activities in Japan

As represented to the Commission by the applicant, margin requirements for swap activities in Japan are governed by the Financial Instruments and Exchange Act, No. 25 of 1948 ("FIEA"), covering Financial Instrument Business Operators ("FIBOs") and Registered Financial Institutions ("RFIs"), which include regulated banks, cooperatives, insurance companies, pension funds, and investment funds. The Japanese Prime Minister delegated broad authority to implement these laws to the JFSA. Pursuant to this authority, the JFSA has promulgated the Cabinet Office Ordinance,[27] Supervisory Guidelines,[28] and Public Notifications.[29]

These requirements supplement the requirements of FIEA with a more proscriptive direction with respect to margin requirements.[30]

Pursuant to Article 29 of the FIEA, any person that engages in trade activities that constitute "Financial Instruments Business"—which, among other things, includes over-the-counter transactions in derivatives ("OTC derivatives") or intermediary, brokerage (excluding brokerage for clearing of securities) or agency services therefor[31]—must register under the

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[20] The Final Margin Rule was modified substantially from its proposed form to further align the Commission's margin requirements with the BCBS/IOSCO Framework and, as a result, the potential for conflict with foreign margin requirements should be reduced. For example, the Final Margin Rule raised the material swaps exposure level from $3 billion to the BCBS/IOSCO standard of $8 billion, which reduces the number of entities that must collect and post initial margin. *See* Final Margin Rule, 81 FR at 644. In addition, the definition of uncleared swaps was broadened to include DCOs that are not registered with the Commission but pursuant to Commission orders are permitted to clear for U.S. persons. *See id.* at 638. The Commission notes, however, that the BCBS–IOSCO Framework leaves certain elements open to interpretation (*e.g.,* the definition of "derivative") and expressly invites regulators to build on certain principles as appropriate. *See, e.g.,* Element 4 (eligible collateral) (national regulators should "develop their own list of eligible collateral assets based on the key principle, taking into account the conditions of their own markets"); Element 5 (initial margin) (the degree to which margin should be protected would be affected by "the local bankruptcy regime, and would vary across jurisdictions"); Element 6 (transactions with affiliates) ("Transactions between a firm and its affiliates should be subject to appropriate regulation in a manner consistent with each jurisdiction's legal and regulatory framework.").

[21] *See* 17 CFR 23.160(c)(5).

[22] Under Commission regulations 23.203 and 23.606, CSEs must maintain all records required by the CEA and the Commission's regulations in accordance with Commission regulation 1.31 and keep them open for inspection by representatives of the Commission, the United States Department of Justice, or any applicable prudential regulator. *See* 17 CFR 23.203, 23.606. The Commission further expects that prompt access to books and records and the ability to inspect and examine a non-U.S. CSE will be a condition to any comparability determination.

[23] "Swaps activities" is defined in Commission regulation 23.600(a)(7) to mean, with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives. The Commission's regulations under 17 CFR part 23 are limited in scope to the swaps activities of CSEs.

[24] No CSE that is not legally required to comply with a law or regulation determined to be comparable may voluntarily comply with such law or regulation in lieu of compliance with the CEA and the relevant Commission regulation. Each CSE that seeks to rely on a comparability determination is responsible for determining whether it is subject to the laws and regulations found comparable.

[25] The Commission has provided the relevant foreign regulator(s) with opportunities to review and correct the applicant's description of such laws and regulations on which the Commission will base its comparability determination. The Commission relies on the accuracy and completeness of such review and any corrections received in making its comparability determinations. A comparability determination based on an inaccurate description of foreign laws and regulations may not be valid.

[26] 78 FR at 45345.

[27] Cabinet Office Ordinance on Financial Instruments Business (Cabinet Office Ordinance No. 52 of August 6, 2007), including supplementary provisions ("FIB Ordinance").

[28] Comprehensive Guideline for Supervision of Major Banks, etc., Comprehensive Guidelines for Supervision of Regional Financial Institutions, Comprehensive Guideline for Supervision of Cooperative Financial Institutions, Comprehensive Guideline for Supervision of Financial Instruments Business Operators, etc., Comprehensive Guidelines for Supervision of Insurance Companies, and Comprehensive Guidelines for Supervision of Trust Companies, etc. (together, "Supervisory Guideline").

[29] JFSA Public Notification No. 15 of March 31, 2016 ("JFSA Public Notice No. 15"); JFSA Public Notification No. 16 of March 31, 2016 ("JFSA Public Notice No. 16"); and JFSA Public Notification No. 17 of March 31, 2016 ("JFSA Public Notice No. 17").

[30] Collectively, FIEA, FIB Ordinance, Supervisory Guideline, and JFSA Public Notifications are referred to herein as the "JFSA's margin rules," "JFSA's margin regime," "JFSA's margin requirements" or the "laws of Japan."

[31] *See* Article 2(8)(iv) of the FIEA.

FIEA as a FIBO. Banks that conduct specified activities in the course of trade, including OTC derivatives must register under the FIEA as RFIs pursuant to Article 33–2 of the FIEA. Banks registered as RFIs are required to comply with relevant laws and regulations for FIBOs regarding specified activities. Failure to comply with any relevant laws and regulations, Supervisory Guidelines, or Public Notifications would subject the applicant to potential sanctions or corrective measures.

All current CSEs established under the laws of Japan are registered in Japan as RFIs or FIBOs under the supervision of the JFSA.

IV. Comparability Analysis

The following section describes the regulatory objective of the Commission's requirements with respect to margin for uncleared swaps imposed by the CEA and the Final Margin Rule and a description of such requirements. Immediately following a description of the requirement(s) of the Final Margin Rule for which a comparability determination was requested by the applicant, the Commission provides a description of the foreign jurisdiction's comparable laws, regulations, or rules. The Commission then provides a discussion of the comparability of, or differences between, the Final Margin Rule and the foreign jurisdiction's laws, regulations, or rules.

A. Objectives of Margin Requirements

1. Commission Statement of Regulatory Objectives

The regulatory objective of the Final Margin Rule is to ensure the safety and soundness of CSEs in order to offset the greater risk to CSEs and the financial system arising from the use of swaps that are not cleared. The primary function of margin is to protect a CSE from counterparty default, allowing it to absorb losses and continue to meet its obligations using collateral provided by the defaulting counterparty. While the requirement to post margin protects the counterparty in the event of the CSE's default, it also functions as a risk management tool, limiting the amount of leverage a CSE can incur by requiring that it have adequate eligible collateral to enter into an uncleared swap. In this way, margin serves as a first line of defense not only in protecting the CSE but in containing the amount of risk in the financial system as a whole, reducing the potential for contagion arising from uncleared swaps.[32]

2. JFSA Statement of Regulatory Objectives

The JFSA states that the objectives of margin requirements are the reduction of systemic risk and promotion of central clearing, as the BCBS/IOSCO Framework defines. To ensure that these objectives are achieved, the laws and regulations of Japan prescribe that financial institutions shall establish an appropriate framework for margin requirements, in line with the BCBS/IOSCO Framework. In addition, the JFSA intends to improve the risk management capabilities of financial institutions through its margin requirements and accordingly, JFSA's Supervisory Guidelines explicitly prescribe that financial institutions are required to establish a framework for margin requirements in order to manage counterparty credit risk.

B. Products Subject to Margin Requirements

The Commission's Final Margin Rule applies only to uncleared swaps. Swaps are defined in section 1a(47) of the CEA[33] and Commission regulations.[34] "Uncleared swap" is defined for purposes of the Final Margin Rule in Commission regulation § 23.151 to mean a swap that is not cleared by a registered derivatives clearing organization, or by a clearing organization that the Commission has exempted from registration by rule or order pursuant to section 5b(h) of the Act.[35]

In Japan, the JFSA's margin rules apply to "non-cleared OTC derivatives," which are defined to mean:

> OTC derivatives except for those cases where Financial Instruments Clearing Organizations (including an Interoperable Clearing Organization in cases where the Financial Instruments Clearing Organization conducts Interoperable Financial Instruments Obligation Assumption Business; hereinafter the same shall apply in paragraph (11), item (i)(c)1.) or a Foreign Financial Instruments Clearing Organization meets the obligation pertaining to OTC derivatives or cases designated by Commissioner of the Financial Services Agency prescribed in Article 1–18–2 of the Order for Enforcement of the [FIEA].[36]

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[32] *See* Cross-Border Margin Rule, 81 FR at 34819.

[33] 7 U.S.C. 1a(47).

[34] *See, e.g.*, § 1.3(xxx), 17 CFR 1.3(xxx).

[35] 17 CFR 23.151.

[36] *See* Cabinet Order No. 321 of 1965; *See also* Article 123(1)(xxi)–5 of the FIB Ordinance. "OTC derivative" is defined in Article 2(22) of FIEA to mean:

[T]he following transactions which are conducted in neither a Financial Instruments Market nor a Foreign Financial Instruments Market (except those specified by a Cabinet Order as those for which it is found not to hinder the public interest or protection of investors when taking into account its content and other related factors).

(i) Transactions wherein the parties thereto promise to deliver or receive Financial Instruments (excluding those listed in Article 2(24)(v); hereinafter the same shall apply in this paragraph) or consideration for them at a fixed time in the future, and, when the resale or repurchase of the underlying Financial Instruments or other acts specified by a Cabinet Order is made, settlement thereof may be made by paying or receiving the differences;

(ii) transactions wherein the parties thereto promise to pay or receive the amount of money calculated based on the Agreed Figure and the Actual Figure or any other similar transactions; and

(iii) transactions wherein the parties thereto promise that one of the parties grants the other party an option to effect a transaction listed in the following items between the parties only by unilateral manifestation of the other party's intention, and the other party pays consideration for such option, or any other similar transactions:

(a) Sales and purchase of Financial Instruments (excluding those specified in item (i)); or

(b) any transaction listed in the preceding two items or items (v) to (vii).

(iv) transactions wherein the parties thereto promise that one of the parties grants the other party an option to, only by unilateral manifestation of his/her intention, effect a transaction wherein the parties promise to pay or receive the amount of money calculated based on the difference between a figure which the parties have agreed in advance to use as the Agreed Figure of the Financial Indicator when such manifestation is made and the Actual Figure of the Financial Indicator at the time of such manifestation, and the other party pays the consideration for such option, or any other similar transactions;

(v) transactions wherein the parties mutually promise that, using the amount the parties have agreed to as the principal, one of the parties will pay the amount of money calculated based on the rate of change in the agreed period of the interest rate, etc. of the Financial Instruments (excluding those listed in Article 2(24)(iii)) or of a Financial Indicator agreed with the other party, and the other party will pay the amount of money calculated based on the rate of change in the agreed period of the interest rate, etc. of the Financial Instruments (excluding those listed in Article 2(24)(iii)) or of a Financial Indicator agreed with the former party (including transactions wherein the parties promise that, in addition to the payment of such amounts, they will also pay, deliver or receive the amount of money or financial instruments that amounts to the agreed principal), or any other similar transactions;

(vi) transactions wherein one of the parties pays money, and the other party, as the consideration therefor, promises to pay money in cases where a cause agreed by the parties in advance and listed in the following items occurs (including those wherein one of the parties promises to transfer the Financial Instruments, rights pertaining to the Financial Instruments or monetary claim (excluding claims that are Financial Instruments or rights pertaining to the Financial Instruments), but excluding those listed in item (ii) to the preceding item), or any other similar transactions; or

(a) a cause pertaining to credit status of a juridical person or other similar cause as specified by a Cabinet Order; or

(b) a cause which it is impossible or extremely difficult for either party to exert his/her influence on the occurrence of and which may have serious influence on business activities of the parties or other business operators as specified by a Cabinet Order (excluding those specified in (a)).

(vii) in addition to transactions listed in the preceding items, transactions which have an economic nature similar to these transactions and are specified by a Cabinet Order as those for which it is found necessary to secure the public interest or protection of investors.

As represented by the applicant, however, Japan has separate definitions of "OTC Derivatives" and "OTC Commodity Derivatives." [37] Japan also has separate margin rules for OTC Commodity Derivatives that are administered by the Japan Ministry of Economy, Trade, and Industry (METI) and the Japan Ministry of Agriculture, Forestry, and Fisheries (MAFF). METI/MAFF finalized their margin requirements for non-cleared OTC Commodity Derivatives on August 1, 2016.[38] While the margin rules for non-cleared OTC Derivatives and OTC Commodity Derivatives are separate, the METI/MAFF non-cleared OTC Commodity Derivative rules incorporate by reference the corresponding JFSA margin rules,[39] and thus, for all purposes material to the determinations below, the METI/MAFF rules and JFSA margin rules are identical. Accordingly, for ease of reference, the discussion below refers only to the JFSA and the JFSA margin rules, but such discussion is equally applicable to METI/MAFF and the METI/MAFF non-cleared OTC Commodity Derivative margin rules. Further, CSEs may rely on the determinations set forth below regarding non-cleared OTC Derivatives subject to the JFSA margin rules equally with respect to non-cleared OTC Commodity Derivatives subject to the METI/MAFF margin rules.

While it is beyond the scope of this comparability determination to definitively map any differences between the definitions of "swap" and "uncleared swap" under the CEA and Commission regulations and Japan's definitions of "OTC Derivative," "OTC Commodity Derivative," "non-cleared OTC Derivative," and "non-cleared OTC Commodity Derivative," the Commission believes that such definitions largely cover the same products and instruments.

However, because the definitions are not identical, the Commission recognizes the possibility that a CSE may enter into a transaction that is an uncleared swap as defined in the CEA and Commission regulations, but that is not a non-cleared OTC Derivative as defined under the laws of Japan. In such cases, the Final Margin Rule would apply to the transaction but the JFSA's margin rules would not apply and thus, substituted compliance would not be available. The CSE could not choose to comply with the JFSA's margin rules [40] in place of the Final Margin Rule.

Likewise, if a transaction is a non-cleared OTC derivative as defined under the laws of Japan but not an uncleared swap subject to the Final Margin Rule, a CSE could not choose to comply with the Final Margin Rule pursuant to this determination. CSEs are solely responsible for determining whether a particular transaction is both an uncleared swap and a non-cleared OTC derivative before relying on substituted compliance under the comparability determinations set forth below.

C. Entities Subject to Margin Requirements

As stated previously, the Commission's Final Margin Rule and Cross-Border Margin Rule apply only to CSEs, *i.e.*, SDs and MSPs registered with the Commission for which there is not a Prudential Regulator.[41] Thus, only such CSEs may rely on the determinations herein for substituted compliance, while CSEs for which there is a Prudential Regulator must look to the determinations of the Prudential Regulators. The Commission has consulted with the Prudential Regulators in making these determinations.

CSEs are not required to collect and/or post margin with every uncleared swap counterparty. Under the Final Margin Rule, the initial margin obligations of CSEs apply only to uncleared swaps with counterparties that meet the definition of "covered counterparty" in § 23.151.[42] Such definition provides that a "covered counterparty" is a counterparty that is a financial end user [43] with material swaps exposure[44] or a swap entity[45] that enters into a swap with a CSE. The variation margin obligations of CSEs under the Final Margin Rule apply more broadly. Such obligations apply to counterparties that are swap entities and all financial end users, not just those with "material swaps exposure."[46]

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[37] "OTC Commodity Derivative" is defined in Article 2, Paragraph 14 of the Commodity Derivatives Act (Act No. 239 of August 5, 1950) to mean any of the following transactions not executed on any Commodity Market, Foreign Commodity Market, or Financial Instruments Exchange Market (*i.e.*, Financial Instruments Exchange Markets prescribed in Article 2, paragraph (17) of the FIEA (excluding transactions carried out through the facilities listed in each of the items of Article 331 of the Commodity Derivatives Act):

(i) Buying and selling transactions where parties agree to transfer between them a Commodity and the consideration therefor at a certain time in the future and where a resale or repurchase of the Commodity subject to said buying and selling can be settled by exchanging the difference;

(ii) Transactions where parties agree to transfer between them money calculated on the basis of the difference between the Contract Price and the Actual Price or other transactions similar thereto;

(iii) Transactions where parties agree to transfer between them money calculated on the basis of the difference between the Agreed Figure and the Actual Figure or other transactions similar thereto;

(iv) Transactions where parties agree that, on the manifestation of intention by one of the parties, the counterparty grants said party a right to establish any of the following transactions between the parties and said party pays the consideration therefor or other transactions similar thereto:

(a) Transactions set forth in item (i);

(b) Transactions set forth in item (ii);

(c) Transactions set forth in the previous item;

(d) Transactions set forth in item (vi);

(v) Transactions where parties agree that the counterparty grants said party a right to establish between the parties a transaction where parties transfer between them money calculated on the basis of the difference between the price agreed between the parties in advance as a price of a Commodity pertaining to the manifestation of intention by one of the parties (including a numerical value that expresses the price level of a Commodity and a numerical value calculated otherwise on the basis of the price of a Commodity; hereinafter the same shall apply in this item) or the numerical value agreed between the parties in advance as a Commodity Index and the actual price of said Commodity or the actual numerical value of said Commodity Index prevailing at the time of said manifestation of intention and said party pays the consideration therefor, or other transactions similar thereto;

(vi) Transactions where parties mutually agree, with respect to a Commodity for which the volume is determined by the parties, that one party will pay to the counterparty money calculated on the basis of the rate of change in the price of said Commodity or a Commodity Index for a period agreed between the parties in advance and that the latter will pay to the former money calculated on the basis of the rate of change in the price of said Commodity or a Commodity Index for a period agreed between the parties in advance, or other transactions similar thereto;

(vii) In addition to transactions listed in the preceding items, transactions with an economic nature similar thereto that are specified by Cabinet Order as those for which it is considered necessary to secure the public interests or protection of parties thereto.

[38] *See* Ministry of Agriculture, Forestry and Fisheries/Ministry of Economy, Trade and Industry Public Notification No. 2 of August 1, 2016; Ordinance for Enforcement of the Commodity Derivatives Act (Ordinance of the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Economy, Trade and Industry No. 3 of February 22, 2005); Supplementary Provisions of Ordinance for Enforcement of the Commodity Derivatives Act No. 3 of February 22, 2005; and Basic Supervision Guidelines of Commodity Derivatives Business Operators, etc.

[39] *See id.*

[40] Or the METI/MAFF margin rules, as discussed above.

[41] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term "Prudential Regulator" to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The Prudential Regulators published final margin requirements in November 2015. *See* Prudential Regulators' Final Margin Rule, 80 FR 74840 (Nov. 30, 2015).

[42] *See* 17 CFR 23.152.

[43] *See* definition of "Financial end user" in 17 CFR 23.150.

As represented by the JFSA, the JFSA's margin rules cover all types of financial institutions, such as prudentially regulated banks, cooperatives, securities companies, insurance companies, pension funds, and investment funds.[47] However, similar to the Final Margin Rule's definitions of "covered counterparty" and "financial end-user," the JFSA's margin regime does not apply to non-financial institutions nor to financial institutions below certain thresholds of activity in OTC derivatives.[48] As discussed above, CSEs are financial institutions for purposes of the JFSA's margin rules.

Given the definitional differences and differences in activity thresholds with respect to the scope of application of the Final Margin Rule and the JFSA's margin requirements, the Commission notes the possibility that the Final Margin Rule and the JFSA's margin rules may not apply to every uncleared swap that a CSE may enter into with a Japanese counterparty. For example, it appears possible that a financial end user with "material swaps exposure" would meet the definition of "covered counterparty" under the Final Margin Rule (and thus the initial and variation margin requirements) while at the same time fall under the JFSA's OTC Derivative activity threshold and be subject only to variation margin requirements. It may also be possible that the Final Margin Rule's definition of "financial end-user" could capture an entity that is a non-financial end-user under the JFSA's margin regime.

With these differences in scope in mind, the Commission reiterates that no CSE may rely on substituted compliance unless it and its transaction are subject to both the Final Margin Rule and the JFSA's margin rules;[49] a CSE may not voluntarily comply with the JFSA's margin rules where such law does not otherwise apply. Likewise, a CSE that is not seeking to rely on substituted compliance should understand that the JFSA's margin rules may apply to its counterparty irrespective of the CSE's decision to comply with the Final Margin Rule.

D. Treatment of Inter-Affiliate Derivative Transactions

The BCBS/IOSCO Framework recognizes that the treatment of inter-affiliate derivative transactions will vary between jurisdictions. Thus, the BCBS/IOSCO Framework does not set standards with respect to the treatment of inter-affiliate transactions. Rather, it recommends that regulators in each jurisdiction review their own legal frameworks and market conditions and put in place margin requirements applicable to inter-affiliate transactions as appropriate.[50]

1. Commission Requirements for Treatment of Inter-Affiliate Transactions

The Commission determined through its Final Margin Rule to provide rules for swaps between "margin affiliates." The definition of margin affiliates provides that a company is a margin affiliate of another company if: (1) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (2) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (3) for a company that is not subject to such principles or standards, if consolidation as described in (1) or (2) would have occurred if such principles or standards had applied.[51]

With respect to swaps between margin affiliates, the Final Margin Rule, with one exception explained below, provides that a CSE is not required to collect initial margin[52] from a margin affiliate provided that the CSE meets the following conditions: (i) The swaps are subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with the inter-affiliate swaps; and (ii) the CSE exchanges variation margin with the margin affiliate.[53]

In an exception to the foregoing general rule, the Final Margin Rule does require CSEs to collect initial margin from non-U.S. affiliates that are financial end users that are not subject to comparable initial margin collection requirements on their own outward-facing swaps with financial end users.[54] This provision is an important anti-evasion measure. It is designed to prevent the potential use of affiliates to avoid collecting initial margin from third parties. For example, suppose that an unregistered non-U.S. affiliate of a CSE enters into a swap with a financial end user and does not collect initial margin. Suppose further that the affiliate then enters into a swap with the CSE. Effectively, the risk of the swap with the third party would have been passed to the CSE without any initial margin. The rule would require this affiliate to post initial margin with the CSE in such cases. The rule would further require that the CSE collect initial margin even if the affiliate routed the trade through one or more other affiliates.[55]

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[44] *See* 17 CFR 23.150, which states that "material swaps exposure" for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. An entity shall count the average daily aggregate notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time. For purposes of this calculation, an entity shall not count a swap that is exempt pursuant to 17 CFR 23.150(b) or a security-based swap that qualifies for an exemption under section 3C(g)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)) and implementing regulations or that satisfies the criteria in section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78–c3(g)(4)) and implementing regulations.

[45] "Swap entity" is defined in 17 CFR 23.150 as a person that is registered with the Commission as a swap dealer or major swap participant pursuant to the Act.

[46] *See* 17 CFR 23.153.

[47] *See* FIB Ordinance Article 123(10) and (11). Specifically, "covered entities" under the JFSA's margin rules include Type 1 FIBOs, RFIs, insurance companies that are RFIs and trust accounts that are RFIs. Covered entities also include Shoko Chukin Bank, the Development Bank of Japan, Shinkin Central Bank, and the Norinchukin Bank. Covered entities must post and collect initial and variation margin to and from other covered entity counterparties.

[48] *See* FIB Ordinance, Article 123(10)(iv) and (11)(iv). In general, the threshold for variation margin is whether the average total amount of the notional principal of OTC Derivatives for a one-year period from April two years before the year in which calculation is required (or one year if calculated in December) exceeds JPY 300 bn. In general, the threshold for initial margin is whether the average month-end aggregate notional amount of non-cleared OTC derivatives, non-cleared OTC commodity derivatives, and physically-settled FX forwards and FX swaps of a consolidated group (excluding inter-affiliate transactions) for March, April, and May one year before the year in which calculation is required exceeds JPY 1.1 trillion. No margin is required for OTC Derivatives with non-covered entities (*i.e.,* non-financial end-users). However, FIBOs and RFIs that fall below the threshold for variation margin are still required by the Supervisory Guidelines to establish appropriate risk management policies and procedures that require exchange of variation margin and appropriate documentation. *See* Supervisory Guideline Section IV—2–4(4)(i).

[49] Or the METI/MAFF margin rules, as discussed above.

[50] *See* BCBS/IOSCO Framework, Element 6: Treatment of transactions with affiliates.

[51] *See* 17 CFR 23.151.

[52] "Initial margin" is margin exchanged to protect against a potential future exposure and is defined in 17 CFR 23.151 to mean the collateral, as calculated in accordance with 17 CFR 23.154 that is collected or posted in connection with one or more uncleared swaps.

[53] *See* 17 CFR 23.159(a).

[54] *See* 17 CFR 23.159(c).

The Commission has stated that its inter-affiliate initial margin requirement is consistent with its goal of harmonizing its margin rules as much as possible with the BCBS/IOSCO Framework. Such Framework, for example, states that the exchange of initial and variation margin by affiliated parties "is not customary" and that initial margin in particular "would likely create additional liquidity demands."[56] With an understanding that many authorities, such as those in Europe and Japan, are not expected to require initial margin for inter-affiliate swaps, the Commission recognized that requiring the posting and collection of initial margin for inter- affiliate swaps generally would be likely to put CSEs at a competitive disadvantage to firms in other jurisdictions.

The Final Margin Rule however, does require CSEs to exchange variation margin with affiliates that are SDs, MSPs, or financial end users (as is also required under the Prudential Regulators' rules).[57] The Commission believes that marking open positions to market each day and requiring the posting or collection of variation margin reduces the risks of inter-affiliate swaps.

2. Requirement for Treatment of Inter-Affiliate Derivatives Under the Laws of Japan

Under Article 123(10) and (11) of Japan's FIB Ordinance, the JFSA's margin requirements do not apply to OTC derivative transactions between counterparties that are "Consolidated Companies" as defined in the Ministry of Finance of Japan's Ordinance on Terminology, Forms, and Preparation Methods of Consolidated Financial Statements.[58] Such "Consolidated Companies" are defined generally in keeping with the Commission's definition of "margin affiliate" for purposes of the Final Margin Rule, discussed above.

However, in mitigation of not requiring margin between Consolidated Companies, the JFSA has explained that its capital requirements for FIBOs/RFIs apply not only on a consolidated basis but also on individual, non-consolidated basis. Thus, a CSE that is a FIBO/RFI is required to hold enough capital to cover exposures under non-cleared OTC derivatives to individual entities in the same consolidated group. Such capital requirement can be reduced if the CSE collects initial and/or variation margin for such inter-affiliate transactions.

In addition to this, the JFSA has explained that its supervision of FIBOs/RFIs is a principles-based approach, and, in accordance with this approach, the JFSA's "Guideline for Financial Conglomerates Supervision" requires financial holding companies and parent companies to measure, monitor, and manage the risks caused by inter-affiliate transactions. Further, the JFSA's "Inspection manual for financial holding companies" requires financial holding companies to establish a robust governance framework and risk management system at a centralized group level, that would, in operation, require management of the risks caused by inter-affiliate transactions. Based on the foregoing, the JFSA has emphasized that it is not necessary for it to require the risk management procedures of FIBOs/RFIs applicable to inter-affiliate transactions to rely on margin requirements only. Rather, taking into account capital requirements and the JFSA's supervision and inspection programs, JFSA represents that it ensures the safety and soundness of FIBOs/RFIs as a whole.

3. Commission Determination

Having compared the outcomes of the JFSA's margin requirements applicable to inter-affiliate derivatives to the outcomes of the Commission's corresponding margin requirements applicable to inter-affiliate swaps, the Commission finds that the treatment of inter-affiliate transactions under the Final Margin Rule and under the JFSA's margin requirements are not comparable.

A CSE entering into a transaction with a consolidated affiliate under the Final Margin Rule would be required to exchange variation margin in accordance with §§ 23.151 through 23.161, and in certain circumstances, collect initial margin in accordance with § 23.159(c). Where such CSE and its counterparty are also subject to the JFSA's margin requirements, and qualify as "Consolidated Companies," the JFSA's margin requirements would not require the CSE to post or collect any form of margin.

While not disputing the JFSA's explanation that its general oversight of the risk management practices of Consolidated Companies adequately addresses the risk of inter-affiliate transactions, the Commission reiterates its view that the inter-affiliate margin requirements are an important anti-evasion measure designed to prevent the potential use of affiliates to avoid collecting initial margin from third parties.

For this reason, the Commission finds that the outcome under the JFSA's margin rules is not comparable to the outcome under the Final Margin Rule and accordingly CSEs must comply with the Final Margin Rule with respect to inter-affiliate swaps.

E. Methodologies for Calculating the Amounts of Initial and Variation Margin

As an overview, the methodologies for calculating initial and variation margin as agreed under the BCBS/IOSCO Framework state that the margin collected from a counterparty should (i) be consistent across entities covered by the requirements and reflect the potential future exposure (initial margin) and current exposure (variation margin) associated with the particular portfolio of non-centrally cleared derivatives, and (ii) ensure that all counterparty risk exposures are covered fully with a high degree of confidence.

With respect to the calculation of initial margin, as a minimum the BCBS/IOSCO Framework generally provides that:

- Initial margin requirements will not apply to counterparties that have less than EUR 8 billion of gross notional in outstanding derivatives.
- Initial margin may be subject to a EUR 50 million threshold applicable to a consolidated group of affiliated counterparties.
- All margin transfers between parties may be subject to a de-minimis minimum transfer amount not to exceed EUR 500,000.
- The potential future exposure of a non-centrally cleared derivative should reflect an extreme but plausible estimate of an increase in the value of the instrument that is consistent with a one-tailed 99% confidence interval over a 10-day horizon, based on historical data that incorporates a period of significant financial stress.
- The required amount of initial margin may be calculated by reference to either (i) a quantitative portfolio margin model or (ii) a standardized margin schedule.
- When initial margin is calculated by reference to an initial margin model, the period of financial stress used for calibration should be identified and applied separately for each broad asset class for which portfolio margining is allowed.
- Models may be either internally developed or sourced from the

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[55] *See id.*

[56] *See* BCBS/IOSCO Framework, Element 6: Treatment of transactions with affiliates.

[57] *See* 17 CFR 23.159(b), Prudential Regulators' Final Margin Rule, 80 FR at 74909.

[58] *See* Ordinance of the Ministry of Finance No. 28 of October 30, 1976.

counterparties or third-party vendors but in all such cases, models must be approved by the appropriate supervisory authority.

- Quantitative initial margin models must be subject to an internal governance process that continuously assesses the value of the model's risk assessments, tests the model's assessments against realized data and experience, and validates the applicability of the model to the derivatives for which it is being used.
- An initial margin model may consider all of the derivatives that are approved for model use that are subject to a single legally enforceable netting agreement.
- Initial margin models may account for diversification, hedging, and risk offsets within well-defined asset classes such as currency/rates, equity, credit, or commodities, but not across such asset classes and provided these instruments are covered by the same legally enforceable netting agreement and are approved by the relevant supervisory authority.
- The total initial margin requirement for a portfolio consisting of multiple asset classes would be the sum of the initial margin amounts calculated for each asset class separately.
- Derivatives for which a firm faces zero counterparty risk require no initial margin to be collected and may be excluded from the initial margin calculation.
- Where a standardized initial margin schedule is appropriate, it should be computed by multiplying the gross notional size of a derivative by the standardized margin rates provided under the BCBS/IOSCO Framework[59] and adjusting such amount by the ratio of the net current replacement cost to gross current replacement cost (NGR) pertaining to all derivatives in a legally enforceable netting set. The BCBS/IOSCO Framework provides the following standardized margin rates:

Asset class	Initial margin requirement (% of notional exposure)
Credit: 0–2 year duration	2
Credit: 2–5 year duration	5
Credit 5+ year duration	10
Commodity	15
Equity	15
Foreign exchange	6
Interest rate: 0–2 year duration	1
Interest rate: 2–5 year duration	2
Interest rate: 5+ year duration	4
Other	15

- For a regulated entity that is already using a schedule-based margin to satisfy requirements under its required capital regime, the appropriate supervisory authority may permit the use of the same schedule for initial margin purposes, provided that it is at least as conservative.
- The choice between model- and schedule-based initial margin calculations should be made consistently over time for all transactions within the same well defined asset class.
- Initial margin should be collected at the outset of a transaction, and collected thereafter on a routine and consistent basis upon changes in measured potential future exposure, such as when trades are added to or subtracted from the portfolio.
- In the event that a margin dispute arises, both parties should make all necessary and appropriate efforts, including timely initiation of dispute resolution protocols, to resolve the dispute and exchange the required amount of initial margin in a timely fashion.

With respect to the calculation of variation margin, as a minimum the BCBS/IOSCO Framework generally provides that:

- The full amount necessary to fully collateralize the mark-to-market exposure of the non-centrally cleared derivatives must be exchanged.
- Variation margin should be calculated and exchanged for derivatives subject to a single, legally enforceable netting agreement with sufficient frequency (*e.g.,* daily).
- In the event that a margin dispute arises, both parties should make all necessary and appropriate efforts, including timely initiation of dispute resolution protocols, to resolve the dispute and exchange the required amount of variation margin in a timely fashion.

1. Commission Requirement for Calculation of Initial Margin

In keeping with the BCBS/IOSCO Framework described above, with respect to the calculation of initial margin, the Commission's Final Margin Rule generally provides that:

- Initial margin is intended to address potential future exposure, *i.e.,* in the event of a counterparty default, initial margin protects the non-defaulting party from the loss that may result from a swap or portfolio of swaps, during the period of time needed to close out the swap(s).[60]
- Potential future exposure is to be an estimate of the one-tailed 99% confidence interval for an increase in the value of the uncleared swap or netting portfolio of uncleared swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of 10 business days or the maturity of the swap or netting portfolio.[61]
- The required amount of initial margin may be calculated by reference to either (i) a risk-based margin model or (ii) a table-based method.[62]
- All data used to calibrate the initial margin model shall incorporate a period of significant financial stress for each broad asset class that is appropriate to the uncleared swaps to which the initial margin model is applied.[63]
- CSEs shall obtain the written approval of the Commission or a registered futures association to use a model to calculate the initial margin required.[64]
- An initial margin model may calculate initial margin for a netting portfolio of uncleared swaps covered by the same eligible master netting agreement.[65]
- An initial margin model may reflect offsetting exposures, diversification, and other hedging benefits for uncleared swaps that are governed by the same eligible master netting agreement by incorporating empirical correlations within the following broad risk categories, provided the CSE validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits: Commodity, credit, equity, and foreign exchange or interest rate.[66]
- Empirical correlations under an eligible master netting agreement may be recognized by the model within each broad risk category, but not across broad risk categories.[67]
- If the initial margin model does not explicitly reflect offsetting exposures, diversification, and hedging benefits between subsets of uncleared swaps within a broad risk category, the CSE

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[59] The BCBS/IOSCO Framework provides standardized margin rates, as set out in the table accompanying the text.

[60] *See* Final Margin Rule, 81 FR at 683.

[61] *See* 17 CFR 23.154(b)(2)(i).

[62] *See* 17 CFR 23.154(a)(1)(i) and (ii).

[63] *See* 17 CFR 23.154(b)(2)(ii).

[64] *See* 17 CFR 23.154(b)(1)(i).

[65] *See* 17 CFR 23.154(b)(2)(v).

[66] *See id.*

[67] *See id.*

shall calculate an amount of initial margin separately for each subset of uncleared swaps for which such relationships are explicitly recognized by the model and the sum of the initial margin amounts calculated for each subset of uncleared swaps within a broad risk category will be used to determine the aggregate initial margin due from the counterparty for the portfolio of uncleared swaps within the broad risk category.[68]

- Where a risk-based model is not used, initial margin must be computed by multiplying the gross notional size of a derivative by the standardized margin rates provided under § 23.154(c)(i)[69] and adjusting such amount by the ratio of the net current replacement cost to gross current replacement cost (NGR) pertaining to all derivatives under the same eligible master netting agreement.[70]
- A CSE shall not be deemed to have violated its obligation to collect or post initial margin if, *inter alia,* it makes timely initiation of dispute resolution mechanisms, including pursuant to § 23.504(b)(4).[71]

2. Commission Requirements for Calculation of Variation Margin

In keeping with the BCBS/IOSCO Framework described above, with respect to the calculation of variation margin, the Commission's Final Margin Rule generally provides that:

- Each business day, a CSE must calculate variation margin amounts for itself and for each counterparty that is an SD, MSP, or financial end-user. Such variation margin amounts must be equal to the cumulative mark-to-market change in value to the CSE of each uncleared swap, adjusted for any variation margin previously collected or posted with respect to that uncleared swap.[72]
- Variation margin must be calculated using methods, procedures, rules, and inputs that to the maximum extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.[73]
- CSEs may comply with variation margin requirements on an aggregate basis with respect to uncleared swaps that are governed by the same eligible master netting agreement.[74]
- A CSE shall not be deemed to have violated its obligation to collect or post variation margin if, *inter alia,* it makes timely initiation of dispute resolution mechanisms, including pursuant to § 23.504(b)(4).[75]

3. Japan Requirements for Calculation of Initial Margin

- Potential future exposure is margin to be posted as deposits corresponding to a reasonable estimate of the amount of expenses or losses that may occur in the future with regard to non-cleared OTC derivatives.[76]
- In cases where potential future exposure cannot be calculated by a method of using a quantitative calculation model, FIBOs/RFIs are required to calculate potential future exposure for the non-cleared OTC derivatives by a method of using a standardized margin schedule.[77]
- When calculating potential future exposure using a quantitative calculation model, FIBOs/RFIs shall use a one-tailed 99% confidence interval and set a margin period of risk for non-cleared OTC derivatives of not less than 10 business days.[78]
- Where calculating potential future exposure by a method of using a quantitative calculation model, FIBOs/RFIs must use historical data which satisfies the following requirements for each category of non-cleared OTC derivatives for which any of commodity, credit, equity, and foreign exchange or interest rate is the major cause of changes in mark-to-market: (i) Based on an observation period of at least one year and not exceeding five years; (ii) to contain a stress period; (iii) to contain the latest market data; (iv) to be equally weighted; and (v) to be updated at least once a year.[79]
- The quantitative calculation models of FIBOs/RFIs must capture non-linear risks, basis risks, and material risks that may have impact on the value of the exposure.[80]
- FIBOs/RFIs must file notice with the JFSA of an intention to use a quantitative calculation model to estimate an amount of potential future exposure, including a description of the model's methodology and structure, the model's compliance with JFSA margin rules, and the policies and procedures of a ''model control unit''.[81]
- FIBOs/RFIs must conduct back testing of the quantitative calculation model against changes in the mark-to-market value of non-cleared OTC derivatives that occurred during a period equivalent to a holding period of not less than 10 business days.[82]
- When calculating potential future exposure for non-cleared OTC derivatives only by a method of using a quantitative calculation model, FIBOs/RFIs may conduct a calculation for each master netting agreement meeting the definition of such as prescribed in Article 2, paragraph (5) of the Act on Close-out Netting of Specified Financial Transaction Conducted by Financial Institutions. (Act No. 108 of 1998).[83]
- Potential future exposure calculated by FIBOs/RFIs by a method of using a quantitative calculation model shall be the sum of amounts calculated for each category of transaction for which any of the following is the major cause of changes in mark-to-market value, with regard to all non-cleared OTC derivatives conducted by the FIBOs: Commodity, credit, equity, and foreign exchange or interest rate.[84]
- FIBOs/RFIs may account for the effects of risk offsets, diversification, and hedging within each broad category of transactions for which commodity, credit, equity, and foreign exchange or interest rates is the major cause of changes in mark-to-market, but not across such risk categories.[85]
- Where a quantitative calculation model is not used, FIBOs/RFIs must compute potential future exposure by multiplying the gross notional size of a non-cleared OTC derivative by the standardized margin schedule set forth in JFSA's Public Notification No. 15[86] and adjusting such amount by the ratio of the net current replacement cost to gross current replacement cost (NGR) pertaining to all derivatives under the same master netting agreement.
- FIBOs/RFIs are required to have documentation with each uncleared OTC derivative counterparty that, among other things, identifies dispute resolution measures applicable to margin disputes for uncleared OTC derivatives.[87]

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[68] *See* 17 CFR 23.154(b)(2)(vi).

[69] The standardized margin rates provided in 17 CFR 23.154(c)(i) are, in all material respects, the same as those provided under the BCBS/IOSCO Framework. *See supra* note 59.

[70] *See* 17 CFR 23.154(c).

[71] *See* 17 CFR 23.152(d)(2)(i).

[72] *See* 17 CFR 23.155(a).

[73] *See id.*

[74] *See* 17 CFR 23.153(d)(1).

[75] *See* 17 CFR 23.153(e)(2)(i).

[76] FIB Ordinance Article 123(1)(xxi)–6.

[77] JFSA Public Notice No. 15, Article 1(3).

[78] JFSA Public Notice No. 15, Article 3(1).

[79] JFSA Public Notice No. 15, Article 4.

[80] JFSA Public Notice No. 15, Article 5(1).

[81] JFSA Public Notice No. 15, Article 1(2).

[82] JFSA Public Notice No. 15, Article 6(1)(iii).

[83] JFSA Public Notice No. 15, Article 2(1).

[84] JFSA Public Notice No. 15, Article 3(2).

[85] JFSA Public Notice No. 15, Article 3(3).

[86] The standardized margin rates provide in JFSA Public Notification No. 15 of March 31, 2016, Article 9(2) are, in all material respects, the same as those provided under the BCBS/IOSCO Framework. *See supra* note 59.

[87] *See* Article 37–3 of the FIEA and Article 99 of the FIB Ordinance.

4. Japan Requirements for Calculation of Variation Margin

- FIBOs/RFIs must calculate on each business day for each counterparty the total amount of the mark-to-market for non-cleared OTC Derivatives and the total amount of the mark-to-market of collateral collected or posted as variation margin with respect to the counterparty.[88]
- FIBOs/RFIs may comply with variation margin requirements on an aggregate basis with respect to uncleared OTC derivatives that are governed by the same master netting agreement.[89]
- FIBOs/RFIs are required to have documentation with each uncleared OTC derivative counterparty that, among other things, identifies dispute resolution measures applicable to margin disputes for uncleared OTC derivatives.[90]

5. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission has determined that the amounts of initial and variation margin calculated under the methodologies required under the JFSA's margin rules would be similar to those calculated under the methodologies required under the Final Margin Rule. Specifically, under the Final Margin Rule and the JFSA's margin rules:

- The definitions of initial and variation margin are similar, including the description of potential future exposure agreed under the BCBS/IOSCO Framework;
- Margin models and/or a standardized margin schedule may be used to calculate initial margin;
- Criteria for historical data to be used in initial margin models is similar;
- Initial margin models must be submitted for review by a regulator prior to use;
- Eligibility for netting is similar;
- Correlations may be recognized within broad risk categories, but not across such risk categories;
- The required method of calculating initial margin using standardized margin rates is essentially identical; and
- The proscribed standardized margin rates are essentially identical.

Accordingly, the Commission finds that the methodologies for calculating the amounts of initial and variation margin for uncleared OTC derivatives under the laws of Japan are comparable in outcome to those of the Final Margin Rule.

F. Process and Standards for Approving Margin Models

Pursuant to the BCBS/IOSCO Framework, initial margin models may be either internally developed or sourced from counterparties or third-party vendors but in all such cases, models must be approved by the appropriate supervisory authority.[91]

1. Commission Requirement for Margin Model Approval

In keeping with the BCBS/IOSCO Framework, the Final Margin Rule generally requires:

- CSEs shall obtain the written approval of the Commission or a registered futures association to use a model to calculate the initial margin required.[92]
- The Commission or a registered futures association will approve models that demonstrate satisfaction of all of the requirements for an initial margin model set forth above in Section IV(E)(2), in addition to the requirements for annual review;[93] control, oversight, and validation mechanisms;[94] documentation;[95] and escalation procedures.[96]
- CSEs must notify the Commission and the registered futures association in writing 60 days prior to, extending the use of an initial margin model to an additional product type; making any change to the model that would result in a material change in the CSE's assessment of initial margin requirements; or making any material change to modeling assumptions.
- The Commission or the registered futures association may rescind its approval, or may impose additional conditions or requirements if the Commission or the registered futures association determines, in its discretion, that a model no longer complies with the requirements for an initial margin model summarized above in Section IV(E)(2).

2. Japan Requirements for Approval of Margin Models

In keeping with the BCBS/IOSCO Framework, the JFSA's margin rules generally require:

- FIBOs/RFIs must file notice with the JFSA of an intention to use a quantitative calculation model to estimate an amount of potential future exposure, including a description of the model's methodology and structure, the model's compliance with JFSA rules for use of quantitative calculation models summarized above in Section IV(E)(4), and the policies and procedures of a "model control unit".[97]
- FIBOs/RFIs must notify the JFSA without delay of a change in any matters set out in the notice of an intention to use a quantitative calculation model, and any failure to comply with the JFSA rules for use of a quantitative calculation model summarized above in Section IV(E)(4).[98]
- FIBOs/RFIs must establish a proper management framework to use a quantitative calculation model and the JFSA supervises compliance with the model requirements.[99]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission has determined that the requirements for submission of margin models to the JFSA, in the case of FIBOs/RFIs, are comparable to and as comprehensive as the regulatory approval requirements of the Final Margin Rule. Specifically, the notice of an intent to use a quantitative calculation model required under the JFSA's margin rules, prior to its use, must contain a comprehensive explanation and evaluation of the proposed model that is comparable in all material respects to the approval procedures required under the Final Margin Rule. While the Commission recognizes that a notice of intent to the JFSA is not the same as requiring a specific approval from a regulator, the JFSA has represented that it would use its supervisory powers to prohibit the use of an inadequate quantitative calculation model. In light of this representation by the JFSA, the Commission finds that such requirements under the laws of Japan are comparable to those of the Final Margin Rule.

G. Timing and Manner for Collection or Payment of Initial and Variation Margin

1. Commission Requirement for Timing and Manner for Collection or Payment of Initial and Variation Margin

With respect to the timing and manner for collection or posting of initial margin, the Final Margin Rule generally provides that:

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[88] FIB Ordinance Article 123(1)(xxi)–5(a).

[89] *See* FIB Ordinance Article 123(1)(xxi)–5(a).

[90] *See* Supervisory Guideline Section IV–2–4(4)(i)(A) and (ii)(A).

[91] *See* BCBS/IOSCO Framework Requirement 3.3.

[92] *See* 17 CFR 23.154(b)(1)(i).

[93] *See* 17 CFR 23.154(b)(4), discussed further below.

[94] *See* 17 CFR 23.154(b)(5), discussed further below.

[95] *See* 17 CFR 23.154(b)(6), discussed further below.

[96] *See* 17 CFR 23.154(b)(7), discussed further below.

[97] JFSA Public Notice No. 15, Article 1(2) and Article 7. The requirements for a model control unit are discussed in Section IV(I) below.

[98] *See* JFSA Public Notice No. 15, Article 8(1).

[99] *See* Supervisory Guideline Section IV–2–4(4)(ii)(C).

- Where a CSE is required to collect initial margin, it must be collected on or before the business day after execution of an uncleared swap, and thereafter the CSE must continue to hold initial margin in an amount equal to or greater than the required initial margin amount as re-calculated each business day until such uncleared swap is terminated or expires.
- Where a CSE is required to post initial margin, it must be posted on or before the business day after execution of an uncleared swap, and thereafter the CSE must continue to post initial margin in an amount equal to or greater than the required initial margin amount as re-calculated each business day until such uncleared swap is terminated or expires.
- Required initial margin amounts must be posted and collected by CSEs on a gross basis (*i.e.,* amounts to be posted may not be set-off against amounts to be collected from the same counterparty).

With respect to the timing and manner for collection or posting of variation margin, the Final Margin Rule generally provides that:

- Where a CSE is required to collect variation margin, it must be collected on or before the business day after execution of an uncleared swap, and thereafter the CSE must continue to collect the required variation margin amount, if any, each business day as re-calculated each business day until such uncleared swap is terminated or expires.[100]
- Where a CSE is required to post variation margin, it must be posted on or before the business day after execution of an uncleared swap, and thereafter the CSE must continue to post the required variation margin amount, if any, each business day as re-calculated each business day until such uncleared swap is terminated or expires.[101]

With respect to both initial and variation margin, a CSE shall not be deemed to have violated its obligation to collect or post margin if, *inter alia,* it makes timely initiation of dispute resolution mechanisms, including pursuant to § 23.504(b)(4).[102]

2. Japan Requirements for Timing and Manner for Collection of Initial and Variation Margin

With respect to the timing and manner for collection or posting of initial margin, the JFSA's margin rules generally provide that:

- Initial margin must be calculated upon execution, termination, or modification of a non-cleared OTC derivative.[103]
- Initial margin must be calculated when necessary based on market changes.[104]
- In any event, initial margin must be calculated no later than one month after the last calculation of initial margin.[105]
- Where FIBOs/RFIs are required to collect initial margin, it must call for the initial margin amount immediately after calculation and collect such amount as soon as practicable.[106]
- Where FIBOs/RFIs are required to post initial margin, it must be posted as soon as practicable after it receives a call for an initial margin amount.[107]
- Required initial margin amounts must be posted and collected by FIBOs/RFIs on a gross basis (*i.e.,* amounts to be posted may not be set-off against amounts to be collected from the same counterparty).

With respect to the timing and manner for collection or posting of variation margin, the JFSA's margin rules generally provide that:

- FIBOs/RFIs are required to calculate the variation margin amount each business day.[108]
- Where FIBOs/RFIs are required to collect a variation margin amount, it must be called for immediately and collected as soon as practicable.[109]
- Where FIBOs/RFIs are required to post a variation margin amount, it must be posted as soon as practicable.[110]

3. Commission Determination

Having compared the JFSA's margin requirements applicable to the timing and manner of collection and payment of initial and variation margin to the Commission's corresponding margin requirements, the Commission finds that the JFSA's margin requirements are, despite apparent differences in certain respects, comparable in outcome.

Under the Final Margin Rule, where initial margin is required, a CSE must calculate the amount of initial margin each business day. The JFSA's margin rules allow a maximum of one month between initial margin calculations under some circumstances. However, the JFSA has explained that FIBOs/RFIs that are subject to the first phase of implementation of the JFSA's margin rules for non-cleared OTC Derivatives (*i.e.,* those with the largest notional amounts of outstanding non-cleared OTC Derivatives) regularly trade non-cleared OTC Derivatives. Accordingly, because JFSA margin rules on calculation of initial margin require FIBOs/RFIs to recalculate initial margin whenever transactions are entered, expire, or are modified, and whenever fluctuations occur in markets or other factors affecting the amount of initial margin, such FIBOs/RFIs are likely to be required to recalculate initial margin each business day. Only FIBOs/RFIs subject to the later phase of implementation that do not regularly trade non-cleared OTC Derivatives would not be required to recalculate initial margin each business day.

With respect to the timing of collecting/posting margin, the Final Margin Rule requires CSEs to collect/post any required margin amount (whether initial or variation) within one business day. The JFSA's margin rules specify only that margin be collected or posted "as soon as practicable," which presumably could be longer than one business day. However, the JFSA has represented that, as a supervisory matter, it would expect FIBOs/RFIs that are subject to the first phase of implementation of the JFSA's margin rules for non-cleared OTC Derivatives (*i.e.,* those with the largest notional amounts of outstanding non-cleared OTC Derivatives) to collect or post margin, as applicable, within one business day, with some flexibility for cross-border transactions. FIBOs/RFIs subject to the later phase of implementation would be expected to collect or post margin, as applicable, within two business days, again with some flexibility for cross-border transactions.

In addition, the JFSA has represented that the timing of margin collection and posting will naturally shorten over a relatively brief period of time because the industry in Japan has committed to move toward T+1 settlement of financial instruments by 2018.

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[100] *See* 17 CFR 23.153(a).

[101] *See* 17 CFR 23.153(b).

[102] *See* 17 CFR 23.153(e)(2)(i).

[103] *See* FIB Ordinance Article 123(1)(xxi)–6(a). As represented by the JFSA, this requirement is interpreted to mean that IM shall be recalculated in any of the following circumstances:

(a) A new contract is executed with a counterparty;

(b) An existing contract with a counterparty expires;

(c) A relationship of rights pertaining to non-cleared OTC derivatives is changed;

(d) Recalibration is deemed necessary due to fluctuations of markets or other grounds or

(e) One month has elapsed since the latest recalculation.

[104] *See id.*

[105] *See id.*

[106] *See* FIB Ordinance Article 123(1)(xxi)–6(b) and (c).

[107] *See* FIB Ordinance Article 123(1)(xxi)–6(f).

[108] *See* FIB Ordinance Article 123(1)(xxi)–5(a).

[109] *See* FIB Ordinance Article 123(1)(xxi)–5(b) and (c).

[110] *See* FIB Ordinance Article 123(1)(xxi)–5(d).

Finally, the Commission understands that transactions in Japanese Government Bonds ("JGBs") currently settle in 2 or 3 business days. The JFSA believes this will shorten to T+1 by 2018. However, the Commission is cognizant that if it does not find comparability on this element, JGB's may become ineligible for use as collateral whenever the Final Margin Rule is applicable and thus the market will lose a safe and highly liquid form of eligible collateral, perhaps increasing certain types of risk.

Given the representations of the JFSA with respect to its expectations on compliance with its margin rules in practice, and the current settlement cycle for JGBs, the Commission finds that the requirements of the JFSA's rules with respect to the timing and manner for collection or payment of initial and variation margin are comparable.

H. Margin Threshold Levels or Amounts

The BCBS/IOSCO Framework provides that initial margin could be subject to a threshold not to exceed EUR 50 million. The threshold is applied at the level of the consolidated group to which the threshold is being extended and is based on all non-centrally cleared derivatives between the two consolidated groups.

Similarly, to alleviate operational burdens associated with the transfer of small amounts of margin, the BCBS/IOSCO Framework provides that all margin transfers between parties may be subject to a de-minimis minimum transfer amount not to exceed EUR 500,000.

1. Commission Requirement for Margin Threshold Levels or Amounts

In keeping with the BCBS/IOSCO Framework, with respect to margin threshold levels or amounts the Final Margin Rule generally provides that:

- CSEs may agree with their counterparties that initial margin may be subject to a threshold of no more than $50 million applicable to a consolidated group of affiliated counterparties.[111]
- CSEs are not required to collect or to post initial or variation margin with a counterparty until the combined amount of initial margin and variation margin to be collected or posted is greater than $500,000 (*i.e.,* a minimum transfer amount).[112]

2. Japan Requirements for Margin Threshold Levels or Amounts

Also in keeping with the BCBS/IOSCO Framework, with respect to margin threshold levels or amounts, the JFSA's margin requirements generally provide that:

- FIBOs/RFIs may agree with their counterparties that initial margin may be subject to a threshold of no more than JPY 7 billion applicable to a consolidated group of affiliated counterparties.[113]
- FIBOs/RFIs are not required to collect or to post initial or variation margin with a counterparty until the combined amount of initial margin and variation margin to be collected or posted is greater than JPY 70 million (*i.e.,* a minimum transfer amount).[114]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission has determined that the JFSA requirements for margin threshold levels or amounts, in the case of FIBOs/RFIs, are comparable to those required by the Final Margin Rule, in the case of CSEs.

The Commission notes that at current exchange rates, JPY 7 billion is approximately $68 million, while JPY 70 million is approximately $680,000. Although these amounts are greater than those permitted by the Final Margin Rule, the Commission recognizes that exchange rates will fluctuate over time and thus the Commission finds that such requirements under the laws of Japan are comparable in outcome to those of the Final Margin Rule.

I. Risk Management Controls for the Calculation of Initial and Variation Margin

1. Commission Requirement for Risk Management Controls for the Calculation of Initial and Variation Margin

With respect to risk management controls for the calculation of initial margin, the Final Margin Rule generally provides that:

- CSEs are required to have a risk management unit pursuant to § 23.600(c)(4). Such risk management unit must include a risk control unit tasked with validation of a CSEs initial margin model prior to implementation and on an ongoing basis, including an evaluation of the conceptual soundness of the initial margin model, an ongoing monitoring process that includes verification of processes and benchmarking by comparing the CSE's initial margin model outputs (estimation of initial margin) with relevant alternative internal and external data sources or estimation techniques, and an outcomes analysis process that includes back testing the model.[115]
- In accordance with § 23.600(e)(2), CSEs must have an internal audit function independent of the business trading unit and the risk management unit that at least annually assesses the effectiveness of the controls supporting the initial margin model measurement systems, including the activities of the business trading units and risk control unit, compliance with policies and procedures, and calculation of the CSE's initial margin requirements under this part.[116]
- At least annually, such internal audit function shall report its findings to the CSE's governing body, senior management, and chief compliance officer.[117]

With respect to risk management controls for the calculation of variation margin, the Final Margin Rule generally provides that:

- CSEs must maintain documentation setting forth the variation methodology with sufficient specificity to allow a counterparty, the Commission, a registered futures association, and any applicable prudential regulator to calculate a reasonable approximation of the margin requirement independently.
- CSEs must evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate.
- CSEs, upon request of the Commission or a registered futures association, must provide further data or analysis concerning the variation methodology or a data source, including: The manner in which the methodology meets the requirements of the Final Margin Rule; a description of the mechanics of the methodology; the conceptual basis of the methodology; the empirical support for the methodology; and the empirical support for the assessment of the data sources.

2. Japan Requirements for Risk Management Controls for the Calculation of Initial and Variation Margin

With respect to risk management controls for the calculation of initial margin, the JFSA's margin requirements generally provide that:

- Where FIBOs/RFIs use a quantitative calculation model to calculate initial margin, it must establish a model control unit, independent from units that execute non-cleared OTC derivatives, responsible for the design and operation of a system for managing such model.[118]

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[111] *See* 17 CFR 23.154(a)(3) and definition of "initial margin threshold" in 17 CFR 23.151.

[112] *See* 17 CFR 23.152(b)(3).

[113] JFSA Public Notice No. 17, Article 3(2).

[114] *See* FIB Ordinance Article 123(1)(xxi)–5(b) and (xxi)–6(b).

[115] *See* 17 CFR 23.154(b)(5).

[116] *See* 17 CFR 23.154(b)(5)(iv).

[117] *See* 17 CFR 23.154(b)(5)(iv).

- The model control unit must document policies, control, and procedures for an operation of the quantitative calculation model (including the criteria for assessment of the quantitative calculation model and measures to be taken in cases where the results of the assessment conflict with the criteria set in advance).[119]
- The model control unit shall document procedures and results of back testing against changes in the mark-to-market value of non-cleared OTC derivatives that occurred during a period equivalent to a holding period of not less than 10 business days.[120]
- The model control unit shall establish procedures for validating a quantitative calculation model and properly revising the quantitative calculation model at the time of the development thereof and periodically thereafter, as well as in the risk event where the accuracy of the quantitative calculation model is impaired due to a material modification to the quantitative calculation model or a structural change in the market.[121]
- The model control unit shall confirm that a quantitative calculation model can be properly operated with major counterparties by testing the quantitative calculation model in an appropriate simulated portfolio.[122]
- An internal audit shall be conducted in principle at least once a year with regard to a calculation process of potential future exposure.[123]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission has determined that the JFSA requirements applicable to FIBOs/RFIs pertaining to risk management controls for the calculation of initial and variation margin are substantially the same as the corresponding requirements under the Final Margin Rule. Specifically, the Commission finds that under both the JFSA's requirements and the Final Margin Rule, a CSE is required to establish a unit independent of the trading desk that is tasked with comprehensively managing the entity's use of an initial margin model, including establishing controls and testing procedures. Accordingly, the Commission finds that the JFSA's requirements pertaining to risk management controls over the use of initial margin models are comparable in outcome to the controls required by the Final Margin Rule.

J. Eligible Collateral for Initial and Variation Margin

As explained in the BCBS/IOSCO Framework, to ensure that counterparties can liquidate assets held as initial and variation margin in a reasonable amount of time to generate proceeds that could sufficiently protect collecting entities from losses on non-centrally cleared derivatives in the event of a counterparty default, assets collected as collateral for initial and variation margin purposes should be highly liquid and should, after accounting for an appropriate haircut, be able to hold their value in a time of financial stress. Such a set of eligible collateral should take into account that assets which are liquid in normal market conditions may rapidly become illiquid in times of financial stress. In addition to having good liquidity, eligible collateral should not be exposed to excessive credit, market and FX risk (including through differences between the currency of the collateral asset and the currency of settlement). To the extent that the value of the collateral is exposed to these risks, appropriately risk-sensitive haircuts should be applied. More importantly, the value of the collateral should not exhibit a significant correlation with the creditworthiness of the counterparty or the value of the underlying non-centrally cleared derivatives portfolio in such a way that would undermine the effectiveness of the protection offered by the margin collected. Accordingly, securities issued by the counterparty or its related entities should not be accepted as collateral. Accepted collateral should also be reasonably diversified.

1. Commission Requirement for Eligible Collateral for Initial and Variation Margin

With respect to eligible collateral that may be collected or posted to satisfy an initial margin obligation, the Final Margin Rule generally provides that CSEs may collect or post:[124]

- Cash denominated in a major currency, being United States Dollar (USD); Canadian Dollar (CAD); Euro (EUR); United Kingdom Pound (GBP); Japanese Yen (JPY); Swiss Franc (CHF); New Zealand Dollar (NZD); Australian Dollar (AUD); Swedish Kronor (SEK); Danish Kroner (DKK); Norwegian Krone (NOK); any other currency designated by the Commission; or any currency of settlement for a particular uncleared swap.
- A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury.
- A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the U.S. government.
- A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to SDs subject to regulation by a prudential regulator.
- A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the timely payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities.
- A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank as defined in § 23.151.
- Other publicly-traded debt that has been deemed acceptable as initial margin by a prudential regulator as defined in § 23.151.
- A publicly traded common equity security that is included in: The Standard & Poor's Composite 1500 Index or any other similar index of liquid and readily marketable equity securities as determined by the Commission, or an index that a CSE's supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction.
- Securities in the form of redeemable securities in a pooled investment fund representing the security-holder's proportional interest in the fund's net assets and that are issued and redeemed

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[118] *See* JFSA Public Notice No. 15, Article 6(1)(i).

[119] *See* JFSA Public Notice No. 15, Article 6(1)(ii).

[120] *See* JFSA Public Notice No. 15, Article 6(1)(iii).

[121] *See* JFSA Public Notice No. 15, Article 6(1)(iv).

[122] *See* JFSA Public Notice No. 15, Article 6(1)(v).

[123] *See* JFSA Public Notice No. 15, Article 6(1)(vi).

[124] *See* 17 CFR 23.156(a)(1).

only on the basis of the market value of the fund's net assets prepared each business day after the security-holder makes its investment commitment or redemption request to the fund, if the fund's investments are limited to securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and immediately-available cash funds denominated in U.S. dollars; or securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20% risk weight under the capital rules applicable to SDs subject to regulation by a prudential regulator, and immediately-available cash funds denominated in the same currency; and assets of the fund may not be transferred through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or other means that involve the fund having rights to acquire the same or similar assets from the transferee.

- Gold.
- A CSE may not collect or post as initial margin any asset that is a security issued by: The CSE or a margin affiliate of the CSE (in the case of posting) or the counterparty or any margin affiliate of the counterparty (in the case of collection); a bank holding company, a savings and loan holding company, a U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153, a foreign bank, a depository institution, a market intermediary, a company that would be any of the foregoing if it were organized under the laws of the United States or any State, or a margin affiliate of any of the foregoing institutions; or a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323).[125]
- The value of any eligible collateral collected or posted to satisfy initial margin requirements must be reduced by the following haircuts: An 8% discount for initial margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, except for eligible types of collateral denominated in a single termination currency designated as payable to the non-posting counterparty as part of an eligible master netting agreement; and the discounts set forth in the following table:[126]

STANDARDIZED HAIRCUT SCHEDULE

Cash in same currency as swap obligation	0.0
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in 17 CFR 23.156(a)(1)(iv)): Residual maturity less than one-year	0.5
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in 17 CFR 23.156(a)(1)(iv)): Residual maturity between one and five years	2.0
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in 17 CFR 23.156(a)(1)(iv)): Residual maturity greater than five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in 17 CFR 23.156(a)(1)(iv)): Residual maturity less than one-year	1.0
Eligible corporate debt (including eligible GSE debt securities not identified in 17 CFR 23.156(a)(1)(iv)): Residual maturity between one and five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in 17 CFR 23.156(a)(1)(iv)): Residual maturity greater than five years	8.0
Equities included in S&P 500 or related index	15.0
Equities included in S&P 1500 Composite or related index but not S&P 500 or related index	25.0
Gold	15.0

With respect to eligible collateral that may be collected or posted to satisfy a variation margin obligation, the Final Margin Rule generally provides that CSEs may collect or post:[127]

- With respect to uncleared swaps with an SD or MSP, only immediately available cash funds that are denominated in: U.S. dollars, another major currency (as defined in § 23.151), or the currency of settlement of the uncleared swap.
- With respect to any other uncleared swaps for which a CSE is required to collect or post variation margin, any asset that is eligible to be posted or collected as initial margin, as described above.
- The value of any eligible collateral collected or posted to satisfy variation margin requirements must be reduced by the same haircuts applicable to initial margin described above.[128]

Finally, CSEs must monitor the value and eligibility of collateral collected and posted:[129]

- CSEs must monitor the market value and eligibility of all collateral collected and posted, and, to the extent that the market value of such collateral has declined, the CSE must promptly collect or post such additional eligible collateral as is necessary to maintain compliance with the margin requirements of §§ 23.150 through 23.161.
- To the extent that collateral is no longer eligible, CSEs must promptly collect or post sufficient eligible replacement collateral to comply with the margin requirements of §§ 23.150 through 23.161.

2. Japan Requirements for Eligible Collateral for Initial and Variation Margin

With respect to eligible collateral that may be collected or posted to satisfy an initial or variation margin obligation, the JFSA's margin requirements generally provide that RFIs/FIBOS may collect or post:[130]

- Cash.
- Debt that is issued by a central government, a central bank, or an international financial institution.[131]

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[125] *See* 17 CFR 23.156(a)(2).

[126] *See* 17 CFR 23.156(a)(3).

[127] *See* 17 CFR 23.156(b)(1).

[128] *See* 17 CFR 23.156(b)(2).

[129] *See* 17 CFR 23.156(c).

[130] *See* FIB Ordinance, Article 123(8) and JFSA Public Notice No. 16, Article 1(1).

[131] As listed in JFSA Public Notice No. 16, these are generally: Bank for International Settlements, International Monetary Fund, European Central Bank, European Community, International Development Banks (limited to International Bank for Reconstruction and Development, International Finance Corporation, Multilateral Investment Guarantee Agency, Asian Development Bank, African Development Bank, European Bank for Reconstruction and Development, Inter-American

Continued

- Debt that is issued by any other entity (excluding securitizations) with certain high level credit risk ratings, but excluding debt issued by a counterparty or any of its consolidated affiliates.
- Equity securities of issuers included in the major equity index of certain designated countries, but excluding equity securities issued by a counterparty or any of its consolidated affiliates.
- Investment trust securities (excluding securities of the counterparty or any of its consolidated affiliates) where the trust invests in any of the foregoing items and its mark-to-market is published each business day.

The value of any eligible collateral collected or posted to satisfy initial margin requirements must be reduced by the following haircuts:[132]

Cash	0%.
Equities included in major stock indices	15%.
Government and central bank debt; residual maturity of 1 year or less	0.5%, 1%, or 15%, depending on class of credit rating assigned by eligible credit rating firms.[133]
Government and central bank debt; residual maturity between 1 and 5 years.	2%, 3%, or 15%, depending on class of credit rating assigned by eligible credit rating firms.
Government and central bank debt; residual maturity of more than 5 years.	4%, 6%, or 15% depending on class of credit rating assigned by eligible credit rating firms.
Corporate bonds; residual maturity of 1 year or less	1% or 2% depending on class of credit rating assigned by eligible credit rating firms.
Corporate bonds; residual maturity of between 1 and 5 years	4% or 6%, depending on class of credit rating assigned by eligible credit rating firms.
Corporate bonds; residual maturity of more than 5 years	8% or 12%, depending on class of credit rating assigned by eligible credit rating firms.
Investment trust securities	The highest of the above ratios applicable to investments of the trust.

In addition to the foregoing, under the JFSA's margin requirements, if the currency of a collateral asset posted for the purposes of initial margin is not the same as a currency specified in respect of the transactions, an additional 8% haircut must be applied.[134]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission observes that the JFSA's requirements pertaining to assets eligible for posting or collecting by FIBOs/RFIs as collateral for uncleared OTC derivatives are similar to the requirements of the Final Margin Rule, but are more stringent in some respects and less stringent in others.

Specifically, the JFSA's requirements are more stringent where they require a larger haircut than the Final Margin Rule on government, central bank, and corporate debt where an issuer's credit risk ratings are less than the highest levels provided by credit rating firms regulated by the JFSA. However, the JFSA's requirements are less stringent where they permit the same haircut for all equities (15%) included in major equity indices of certain designated countries[135] while the Final Margin Rule applies a 25% haircut for certain equities not included in the S&P 500. The JFSA's requirements are also less stringent with respect to the eligible collateral for variation margin for non-cleared OTC Derivatives between FIBOs/RFIs that are CSEs and FIBOs/RFIs that are SDs and MSPs (including other CSEs). The Final Margin Rule only permits immediately available cash funds that are denominated in U.S. dollars, another major currency (as defined in § 23.151), or the currency of settlement of the uncleared swap, while the JFSA's requirements would permit any form of eligible collateral (as described above).

In addition, the JFSA's margin rules allow eligible collateral in the form of securities issued by bank holding companies, savings and loan holding companies, certain intermediary holding companies, foreign banks, depository institutions, market intermediaries, and margin affiliates of the foregoing, all of which are prohibited by the Final Margin Rule.[136]

Finally, the JFSA's margin rules also do not specifically address requirements to monitor the eligibility of posted collateral.[137]

While not identical, the Commission finds that the forms of eligible collateral for initial and variation margin under the laws of Japan provide comparable protections to the forms of eligible collateral mandated by the Final Margin Rule. Specifically, the Commission finds that the JFSA's margin regime ensures that assets collected as collateral for initial and variation margin purposes are highly liquid and able to hold their value in a time of financial stress. Because under JFSA's margin regime, a non-defaulting party would be able to liquidate assets held as initial and variation margin in a reasonable amount of time to generate proceeds that could sufficiently protect collecting entities from losses on uncleared swaps in the event of a counterparty default, the Commission finds the JFSA's margin regime with respect to the forms of eligible collateral for initial and variation margin for uncleared swaps is comparable to the Final Margin Rule.

K. Requirements for Custodial Arrangements, Segregation, and Rehypothecation

As explained in the BCBS/IOSCO Framework, the exchange of initial margin on a net basis may be insufficient to protect two market participants with large gross derivatives exposures to each other in the case of one firm's failure. Thus, the gross initial margin between such firms should be exchanged.[138]

Further, initial margin collected should be held in such a way as to ensure that (i) the margin collected is immediately available to the collecting party in the event of the counterparty's default, and (ii) the collected margin must be subject to arrangements that protect the posting party to the extent possible under applicable law in the

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Development Bank, European Investment Bank, European Investment Fund, Nordic Investment Bank, Caribbean Development Bank, Islamic Development Bank, International Finance Facility for Immunisation and Council of Europe Development Bank), or a regional government, Japan Finance Organization for Municipalities or a government agency in Japan.

[132] *See* FIB Ordinance, Article 123(8) and JFSA Public Notification No. 16 of March 31, 2016, Article 2.

[133] *See* Bank Capital Adequacy Notice (JFSA Notice No. 19 of 2006, as amended).

[134] *See* FIB Ordinance, Article 123(9) and JFSA Public Notice No. 16, Article 2(2).

[135] *See* JFSA Public Notice No. 16, Article 1(1)(iv) and Article 2.

[136] *See* 17 CFR 23.156(a)(2).

[137] *See* 17 CFR 23.156(c).

[138] *See* BCBS/IOSCO Framework, Key principle 5.

event that the collecting party enters bankruptcy.[139]

1. Commission Requirement for Custodial Arrangements, Segregation, and Rehypothecation

In keeping with the principles set forth in the BCBS/IOSCO Framework, with respect to custodial arrangements, segregation, and rehypothecation, the Final Margin Rule generally requires that:

- All assets posted by or collected by CSEs as initial margin must be held by one or more custodians that are not the CSE, the counterparty, or margin affiliates of the CSE or the counterparty.[140]
- CSEs must enter into an agreement with each custodian holding initial margin collateral that:
  - Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian;
  - May permit the custodian to hold cash collateral in a general deposit account with the custodian if the funds in the account are used to purchase an asset that qualifies as eligible collateral (other than equities, investment vehicle securities, or gold), such asset is held in compliance with this section, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and
  - Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions including in the event of bankruptcy, insolvency, or a similar proceeding.[141]
- A posting party may substitute any form of eligible collateral for posted collateral held as initial margin.[142]
- A posting party may direct reinvestment of posted collateral held as initial margin in any form of eligible collateral.[143]
- Collateral that is collected or posted as variation margin is not required to be held by a third party custodian and is not subject to restrictions on rehypothecation, repledging, or reuse.[144]

2. Japan Requirements for Custodial Arrangements, Segregation, and Rehypothecation

In keeping with the principles set forth in the BCBS/IOSCO Framework, with respect to custodial arrangements, segregation, and rehypothecation, the JFSA's margin rules generally require that:

- All assets posted by or collected by FIBOs/RFIs as initial margin collateral must be held in a trust or other similar structure (*e.g.,* a custodial arrangement) that constitutes legal segregation or its equivalent.[145]
- The segregation structure must ensure that the collateral will be immediately available to the collecting party in the event of the posting party's default, and that the collateral will be immediately returned to the posting party in the event of the collecting party's bankruptcy.[146]
- Rehypothecation, re-pledge, or re-use of collateral posted as initial margin is prohibited, provided that cash can be re-used where conducted by a safe method and managed in accordance with the initial margin management requirements of the FIB Ordinance, Article 123(1)(xxi)–6(d).[147]
- Collateral that is collected or posted as variation margin is not required to be held by a third party custodian and is not subject to restrictions on rehypothecation, repledging, or reuse.[148]

3. Commission Determination

The Commission notes that the JFSA's margin requirements with respect to custodial arrangements are less stringent than those of the Final Margin Rule in one material respect. Under the Final Margin Rule, all assets posted by or collected by CSEs as initial margin must be held by one or more custodians that are not the CSE, the counterparty, or margin affiliates of the CSE or the counterparty.[149] The JFSA's margin rules do not prohibit a FIBO/RFI from using an affiliated entity as custodian to hold initial margin collected from counterparties.

However, the JFSA has explained that because the JFSA's margin rules require initial margin to be held in a trust structure under the Trust Act of Japan,[150] the risk of use of an affiliated entity as custodian may be mitigated. A trust account under the Trust Act of Japan is commonly utilized when segregation of assets is required because property deposited to such a trust account ("trust property") is legally recognized as segregated from the property of the trustor, the property of the trust bank, and other trust property in the trust account. Thus trust property in such a trust account is bankruptcy remote from the trustor and the trust bank.[151] Therefore, the JFSA represents that initial margin held in a trust account with an affiliate of a FIBO/RFI mitigates any risk that such initial margin would be found part of the FIBO/RFI's estate or its affiliated trust bank's estate in the event of the bankruptcy of either.

Accordingly, despite the differences in required custodial arrangements, the Commission has determined that the JFSA's margin requirements applicable to FIBOs/RFIs pertaining to custodial arrangements, segregation, and rehypothecation are comparable to the corresponding requirements under the Final Margin Rule. Specifically, the Commission finds that under both the JFSA's requirements and the Final Margin Rule, a CSE/FIBO/RFI is required to segregate the initial margin posted by its counterparties with a third-party custodian under terms that constitute legal segregation, and such initial margin may not be rehypothecated. Accordingly, the Commission finds that the JFSA's requirements pertaining to custodial arrangements, segregation, and rehypothecation are comparable in outcome to those required by the Final Margin Rule.

L. Requirements for Margin Documentation

1. Commission Requirement for Margin Documentation

With respect to requirements for documentation of margin arrangements, the Final Margin Rule generally provides that:

- CSEs must execute documentation with each counterparty that provides the CSE with the contractual right and obligation to exchange initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by the Final Margin Rule.[152]

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[139] *See id.*

[140] *See* 17 CFR 23.157(a) and (b).

[141] *See* 17 CFR 23.157(c)(1) and (2).

[142] *See* 17 CFR 23.157(c)(3).

[143] *See id.*

[144] *See* Final Margin Rule, 81 FR at 672.

[145] *See* FIB Ordinance, Article 123(1)(xxi)–6(d).

[146] *See id.*

[147] *See* FIB Ordinance Article 123(1)(xxi)–6(e).

[148] *See* FIB Ordinance Article 123(1)(xxi)–6(d).

[149] *See* 17 CFR 23.157(a) and (b).

[150] Act No. 108 of 2006 (the "Trust Act of Japan").

[151] See Trust Act of Japan, Article 23(1) stating:

> Except where based on a claim pertaining to an Obligation Covered by the Trust Property . . . compulsory execution, provisional seizure, provisional disposition or exercise of a security interest, or an auction . . ., or collection proceedings for delinquent national tax . . . is not allowed to be enforced against property that comes under Trust Property.

[152] *See* 17 CFR 23.158(a).

- The margin documentation must specify the methods, procedures, rules, inputs, and data sources to be used for determining the value of uncleared swaps for purposes of calculating variation margin; describe the methods, procedures, rules, inputs, and data sources to be used to calculate initial margin for uncleared swaps entered into between the CSE and the counterparty; and specify the procedures by which any disputes concerning the valuation of uncleared swaps, or the valuation of assets collected or posted as initial margin or variation margin may be resolved.[153]

2. Japan Requirements for Margin Documentation

With respect to requirements for documentation of margin arrangements, the JFSA's margin rules generally provide that:

- FIBOs/RFIs must establish an appropriate agreement with each OTC derivative counterparty (such as an ISDA Master Agreement and Credit Support Annex) documenting the calculation and transfer of initial and variation margin.[154]
- FIBOs/RFIs are required to have documentation with each uncleared OTC derivative counterparty that, among other things, identifies dispute resolution measures applicable to margin disputes for uncleared OTC derivatives.[155]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission has determined that the JFSA's margin requirements applicable to FIBOs/RFIs pertaining to margin documentation are substantially the same as the margin documentation requirements under the Final Margin Rule. Specifically, the Commission finds that under both the JFSA's requirements and the Final Margin Rule, a CSE/FIBO/RFI is required to enter into documentation with each OTC derivative/swap counterparty that sets forth the method for calculating and transferring initial and variation margin, as well dispute resolution procedures. Accordingly, the Commission finds that the JFSA's requirements pertaining to margin documentation are comparable to those required by the Final Margin Rule.

M. Cross-Border Application of the Margin Regime

1. Cross-Border Application of the Final Margin Rule

The general cross-border application of the Final Margin Rule, as set forth in the Cross-Border Margin Rule, is discussed in detail in Section II above. However, § 23.160(d) and (e) of the Cross-Border Margin Rule also provide certain alternative requirements for uncleared swaps subject to the laws of a jurisdiction that does not reliably recognize close-out netting under a master netting agreement governing a swap trading relationship, or that has inherent limitations on the ability of a CSE to post initial margin in compliance with the custodial arrangement requirements[156] of the Final Margin Rule.[157]

Section 23.160(d) generally provides that where a jurisdiction does not reliably recognize close-out netting, the CSE must treat the uncleared swaps covered by a master netting agreement on a gross basis with respect to collecting initial and variation margin, but may treat such swaps on a net basis with respect to posting initial and variation margin.[158]

Section 23.160(e) generally provides that where certain CSEs are required to transact with certain counterparties in uncleared swaps through an establishment in a jurisdiction where, due to inherent limitations in legal or operational infrastructure, it is impracticable to require posted initial margin to be held by an independent custodian pursuant to § 23.157, the CSE is required to collect initial margin in cash (as described in § 23.156(a)(1)(i)) and post and collect variation margin in cash, but is not required to post initial margin. In addition, the CSE is not required to hold the initial margin collected with an unaffiliated custodian.[159] Finally, the CSE may only enter into such affected transactions up to 5% of its total uncleared swap notional outstanding for each broad category of swaps described in § 23.154(b)(2)(v).

2. Cross-Border Application of JFSA's Margin Regime

With respect to cross-border transactions, JFSA's margin requirements generally provide that, where the JFSA's margin regime would apply to a transaction that also would require compliance with the margin regime of a foreign state, the Commissioner of the JFSA may exempt such transactions from compliance with the JFSA's margin rules if the Commissioner finds that such exemption is unlikely to be contrary to the public interest or hinder protection of investors due to a FIBO/RFI's compliance with the margin regime of the foreign state that is recognized by the JFSA to be equivalent to the JFSA's margin regime.[160]

With respect to non-cleared OTC Derivatives subject to the laws of a jurisdiction that does not reliably recognize close-out netting under a master netting agreement, the JFSA's margin regime generally provides that an FIBO/RFI is exempt from the requirements to post or collect either initial or variation margin.[161] However, as represented by the JFSA, the JFSA's margin regime also requires that, with respect to such transactions, the FIBO/RFI must establish an appropriate risk management framework for the risks of such transactions that may include collecting margin on a gross basis.[162]

With respect to non-cleared OTC Derivatives subject to the laws of a jurisdiction that has inherent limitations on the ability of a FIBO/RFI to post initial margin in compliance with the custodial arrangement requirements under the JFSA's margin rules, as represented by the JFSA, the JFSA's margin rules provide that the FIBO/RFI is exempt only from the requirement to post initial margin, but must still comply with the requirement to collect initial margin and post/collect variation margin.[163]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission finds that the JFSA's margin regime with respect to its cross-border application is comparable in outcome to that of the Final Margin Rule as set forth in the Cross-Border Margin Rule.

First, the Commission recognizes that the JFSA's margin regime permits substituted compliance to substantially the same extent as the Cross-Border Margin Rule. For example, a CSE subject to the JFSA's margin regime entering into a transaction with a counterparty in the U.S., and thus subject to the Final Margin Rule, could request the Commissioner of the JFSA to exempt such transaction from compliance with the JFSA's margin regime upon a finding that the Final Margin Rule is equivalent to the JFSA's margin regime. Thus, where a CSE finds itself subject to both the Final Margin Rule and JFSA's margin regime, but not in a situation where substituted compliance is available under the Cross-Border Margin Regime, it could apply to the JFSA for a finding of equivalence.

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[153] *See* 17 CFR 23.158(b).

[154] *See* Supervisory Guidelines, Section IV–2–4(4)(i)(A) and (4)(ii)(A).

[155] *See* Article 37–3 of the FIEA and Article 99 of the FIB Ordinance.

[156] *See* 17 CFR 23.157 and Section IV(K) above.

[157] *See* 17 CFR 23.160(d) and (e).

[158] *See id.*

[159] *See* 17 CFR 23.160(e) and 23.157(b).

[160] *See* FIB Ordinance, Article 123(10)(v) and (11)(v).

[161] *See* FIB Ordinance, Article 123(10)(i) and (11)(i).

[162] *See* Supervisory Guideline, IV–2–4(4)(iii)(C).

[163] *See* FIB Ordinance 123(1)(xxi)–6(d), (e), and (f).

Second, with respect to transactions subject to the laws of a non-netting jurisdiction, although the JFSA's margin regime exempts FIBOs/RFIs from the otherwise applicable requirements to collect and post margin, the JFSA's Supervisory Guidelines still require such entities to establish an appropriate risk management framework to protect against the risks of such transactions. The Commission notes that a CSE is also required to have a risk management program pursuant § 23.600, and thus the Commission has the authority to inquire as to the adequacy of the risk management covering uncleared swaps in non-netting jurisdictions.

Finally, with respect to non-cleared OTC Derivatives subject to the laws of a jurisdiction that has inherent limitations on the ability of a CSE/FIBO/RFI to post initial margin in compliance with the custodial arrangement requirements of the JFSA's margin rules and the Final Margin Rule, the Cross-Border Margin Rule would only require the CSE to collect (but not post) initial margin in cash (but not hold such initial margin with an unaffiliated custodian)[164] and to post and collect variation margin in cash. The Cross-Border Margin Rule would also limit the CSE's ability to enter into such transactions to 5% of its total uncleared swap notional outstanding for each broad category of swap asset classes. Meanwhile, the JFSA's margin rules also exempt a FIBO/RFI from the requirement to post initial margin, while still requiring compliance with the requirement to collect initial margin and post/collect variation margin.[165] The JFSA margin rule does not have the cash-only requirement, nor does it limit transactions to 5% of a FIBO/RFI's total notional of uncleared swaps.

Having considered the similarities and differences described above, the Commission finds that: (1) The availability of reciprocity of substituted compliance available from the JFSA makes the JFSA margin regime comparable in this respect to that of the Final Margin Rule and the Cross-Border Margin Rule; (2) the representations of the JFSA regarding the extensive risk management requirements applicable to transactions in non-netting jurisdictions makes the JFSA margin regime comparable in this respect to that of the Final Margin Rule and the Cross-Border Margin Rule; and (3) the generally similar requirements for collection of initial margin and collection/posting of variation margin for transactions in jurisdictions where compliance with custodial arrangements is impracticable makes the JFSA margin regime comparable in this respect to that of the Final Margin Rule and the Cross-Border Margin Rule. Accordingly, the Commission finds the cross-border aspects of the JFSA's margin regime comparable to that of the Commission.

N. Supervision and Enforcement

The Commission has a long history of regulatory cooperation with the JFSA, including cooperation in the regulation of registrants of the Commission that are also FIBOs. Thus, the Commission finds that the JFSA has the necessary powers to supervise, investigate, and discipline entities for compliance with its margin requirements and recognizes the JFSA's ongoing efforts to detect and deter violations of, and ensure compliance with, the margin requirements applicable in Japan.

V. Conclusion

As detailed above, the Commission has considered the scope and objectives of the margin requirements for uncleared swaps under the laws of Japan,[166] whether such margin requirements achieve comparable outcomes to the Commission's corresponding margin requirements;[167] and the ability of the JFSA to supervise and enforce compliance with the margin requirements for non-cleared OTC Derivatives under the laws of Japan.[168]

Pursuant to the foregoing process, the Commission has noted several differences in the margin regimes. However, the only difference for which the Commission has found the JFSA's margin regime to be not comparable is that the Final Margin Rule requires collection and posting of variation margin, and in a limited circumstance, collection of initial margin, for uncleared swaps between consolidated affiliates, while the JFSA's margin rules do not require any margin to be posted or collected on such transactions.[169]

Accordingly, a CSE that is subject to both the Final Margin Rule and the JFSA's margin rules with respect to an uncleared swap that is also a non-cleared OTC Derivative may rely on substituted compliance for all aspects of the Final Margin Rule and the Cross-Border Margin Rule except that such CSE must comply with the inter-affiliate margin requirements of § 23.159 of the Final Margin Rule.

Issued in Washington, DC, on September 8, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Appendices to Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioner Giancarlo voted in the affirmative. Commissioner Bowen voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

Today, the CFTC has furthered its commitment to international cooperation and harmonization.

By issuing this comparability determination with respect to Japan's rules on margin for uncleared swaps, the Commission has ensured that a Japanese swap dealer or major swap participant registered with the CFTC can comply with many aspects of our margin rules by meeting the corresponding Japan Financial Services Agency (JFSA) requirements. This is an important and necessary step toward building a strong international regulatory framework for the over-the-counter swaps market, which is critical to ensuring the safety and soundness of our own financial markets.

It's important to remember that we are still at the early stages of developing this new global framework. Shortly after I took office two years ago, there were significant differences between our rules, Japan's rules, and the rules of other jurisdictions. We made tremendous progress bringing those rules together since that time. And today, we all share the same goal of a strong, international framework. But there are still going to be differences, and we understand our laws and the laws of other jurisdictions will never be identical.

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[164] *See* 17 CFR 23.160(e) and 23.157(b).

[165] *See* FIB Ordinance 123(1)(xxi)–6(d), (e), and (f).

[166] *See* 17 CFR 23.160(c)(3)(i).

[167] *See* 17 CFR 23.160(c)(3)(ii). As discussed above, the Commission's Final Margin Rule is based on the BCBS/IOSCO Framework; therefore, the Commission expects that the relevant foreign margin requirements would conform to such Framework at minimum in order to be deemed comparable to the Commission's corresponding margin requirements.

[168] *See* 17 CFR 23.160(c)(3)(iii). *See also* 17 CFR 23.160(c)(3)(iv) (indicating the Commission would also consider any other relevant facts and circumstances).

[169] *See* Section IV(D) supra.

Our comparability determination reflects this understanding. In this instance, as in other decisions, the Commission compared our margin rule with each element of Japan's rules, carefully considering the objectives and outcomes of its specific provisions.

We concluded that while there are differences in our margin regimes, Japan's margin requirements achieve comparable outcomes. The Commission identified only one area where we must make an exception to that conclusion. Our margin rule requires the collection and posting of variation margin and, in certain circumstances, the collection of initial margin for uncleared swaps between consolidated affiliates. However, the JFSA's margin rules do not require any margin to be posted or collected on such transactions.

As a result, the Commission has determined that certain entities subject to both the CFTC's and the JFSA's margin rules with respect to an uncleared swap may rely on the substituted compliance made available under the CFTC's Cross-Border Margin Rule—with the exception that these entities must comply with the CFTC's inter-affiliate margin requirements. I believe this exception is necessary, to help address the risk that can flow back into the United States from offshore activity, even when the subsidiary is not explicitly guaranteed by the U.S. parent. In addition, it will prevent the potential buildup of current exposure among affiliates.

Let me also comment on the concerns regarding differences in our rules with respect to the treatment of collateral, custodial requirements, and swaps with counterparties in so-called "non-netting" jurisdictions. I believe we should allow reliance on Japanese rules in these areas. That is because our goal is comparability in outcomes, and that goal is achieved in both cases.

First, on the treatment of collateral, it has been noted that there is a difference in our rules on haircuts for equities. But it is relatively small. We require a haircut of 15 percent on equities included in the S&P 500, and 25 percent on the S&P 1500. Japan's rules say 15 percent on major equity indices. But we should also note that Japan imposes a larger discount than we do on government bonds and corporate debt. Our comparability process should therefore not insist on line-by-line identity, but rather decide what differences are truly significant to overall outcomes.

Similarly, with respect to custodial requirements, I recognize the importance of the protection of margin deposits, especially in the event of the bankruptcy of a counterparty. The means that we require in our rule—segregation with an independent custodian—are not commonly used in Japan. But the Japan rules require the use of trust structures which achieve the same goal under Japanese law, and are recognized under Japanese law in bankruptcy.

With respect to treatment of non-netting jurisdictions, our rule requires a swap dealer to collect initial margin on a gross basis from a counterparty in a jurisdiction that doesn't clearly recognize netting, while the JFSA rule says that the dealer must establish an appropriate risk management framework that may, but is not required to, include collection of margin. To measure outcomes, we must look not only at the specifics but at how the rules work in different scenarios. For example, Japanese swap dealers whose trades are guaranteed by a U.S. person must follow our rules on this issue and collect margin, regardless of what we decide as a matter of substituted compliance. And Japanese swap dealers whose trades are not guaranteed by a U.S. person, and who are not foreign consolidated subsidiaries, would not be required to follow our rule on this issue, regardless of what we decide as a matter of substituted compliance. That is because such trades are excluded from our rules. Japanese swap dealers who are foreign consolidated subsidiaries (and whose trades are not guaranteed by a U.S. person) would be entitled to substituted compliance, but if they engage in trades with counterparties in non-netting jurisdictions they would still be subject to the JFSA risk management requirements, and any parent entity swap dealer would be subject to our consolidated risk management requirements.

For these reasons, I believe it is appropriate to grant substituted compliance without an exception on these issues.

In making these determinations, staff also considers another jurisdiction's supervisory and enforcement authority in assessing outcomes. And here, I agree with staff's conclusion, and want to underscore the fact that we have a very strong and good relationship with the JFSA. In fact, I met with Commissioner Mori and members of his staff just a few months ago. There is mutual respect, and good communication and cooperation between our agencies. We have worked well together on a number of issues, including the formulation of margin requirements. And this determination will strengthen that relationship further.

Today's decision will contribute significantly to that international framework and help make sure our derivatives markets continue to be dynamic, competitive, and drivers of economic growth. I want to particularly thank our staff in the Division of Swap Dealer and Intermediary Oversight and in the Office of the General Counsel for their work on this and the implementation of our margin rules generally. I also thank Commissioners Bowen and Giancarlo for their input and consideration of this determination.

Appendix 3—Dissenting Statement of Commissioner Sharon Y. Bowen

I thank the staff for all of its hard work on this margin comparability determination. However, I cannot support it. I will be voting no as I think it would introduce greater risk into the derivatives markets—the very thing that we were sent here by the American people to prevent.

There are just three questions I will answer in my remarks today:

1. What is a margin comparability determination and why does it matter?
2. What are the problems with this particular comparability determination?
3. How can we fix it?

First, what is a margin comparability determination and why does it matter?

For many Americans, a margin comparability determination is truly a foreign concept. But it actually has great significance to our economy. Margin is collateral. The 2008 derivatives market was under-collateralized, and that is what caused it to explode and take our economy with it. The American people expected us, as regulators, to fix that by requiring sufficient collateral to address the risk. We have done that with our margin rule.[1]

In a margin comparability determination, we are defining when our U.S. dealers that are operating in the other jurisdiction, can ignore our margin rule and follow the other jurisdiction's margin rule. Allowing American companies to just follow one set of rules—that of the jurisdiction they are in—makes sense when the rules are basically accomplishing the same thing. I am in favor of that. International comity, harmonization across jurisdictions, and having an outcomes-based approach to comparability all make sense.

Unfortunately, that is not the scenario that we have here. While Japanese law has some strong similarities to our own, there are some areas of divergence that are significant and would allow American companies to do overseas what they would never be allowed to do here. And make no mistake; though these companies are physically located in Japan, their cash line runs right back to the United States. That risk could be borne again by American households. A comparability determination should not be the back door way of undoing or weakening our regulations and thereby incentivizing our companies to send their risky business to their affiliates located in Japan. That would not be good for our economy, Japan's economy, or global financial stability overall.

This determination is doubly important because this is the first one and thus sets the stage for others. By adopting a weak standard today, we pave the way for even weaker determinations in the future. Moreover, we are not establishing this determination in conjunction with the Prudential Regulators, who oversee roughly half of U.S. swap dealers and are our counterparts on these issues. We have worked effectively with our Prudential counterparts on the international Working Group on Margin Requirements (WGMR)[2] thus far; making this determination without harmonization amongst U.S. regulators is ill-advised. Differences in requirements would only open the door to regulatory arbitrage domestically.

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[1] Though, as noted in my dissent, this rule was far weaker than it should have been due to how it dealt with inter-affiliate margin. *See* Dissenting Statement of Commissioner Sharon Y. Bowen Regarding Final Rule on Margin for Uncleared Swaps (Dec. 16, 2015), *available at http://www.cftc.gov/PressRoom/SpeechesTestimony/bowenstatement121615a.*

[2] Working Group on Margin Requirements of the Basel Committee on Banking Supervision and the International Organization of Securities Commissions.

Second, what is the problem with this particular comparability determination?

The answer: Bankruptcy. Bankruptcy is something that we do not like to think about, but in finance, it is something that we must always consider when designing deals. We know the old adage: Hope for the best, but plan for the worst. In my work as a law firm partner and Acting Chair of the Securities Investor Protection Corporation (SIPC), I have seen too many bankruptcies. And there are three key differences in our margin rule and the Japanese margin rule that would leave our American companies operating under Japanese law vulnerable. The key differences are:

1. *Where the customer money is kept.* Our rules require customer collateral to be held by a third party—not by either one of the counterparties. This is a safeguard for bankruptcy. If the money is held by one of the counterparties, then a bankruptcy court may use that money to meet the counterparty's debts. Or in a stress event, the counterparty could potentially take the customer money to meet its obligation. If, however, the money is at a third party, it is far more likely that it will get back to the customers that provided it. Japanese law does not have a comparable rule. Thus, in a bankruptcy situation, U.S. customers may be unable to receive back their customer funds. This discrepancy is noted in the determination,[3] but the staff states that the fact that the funds are segregated sufficiently mitigates against the risk. I disagree. In my experience with bankruptcies, I have learned that access to customer funds largely depends on the *location* of those funds. Third-party custodianship is an important safeguard.

2. *Transacting with counterparties in bankruptcy-risky jurisdictions.* There are certain developing countries where there is little certainty that collateral will be there if there is a bankruptcy (non-netting jurisdictions), and/or where they do not adequately protect customer funds from that of the dealer ("non-segregation jurisdictions"). Under our rules, our U.S. dealers have to limit the way they trade with counterparties in these bankruptcy-vulnerable jurisdictions because we are not confident that our American investors will get their money back in a bankruptcy scenario.[4] These safeguards vary depending on the circumstances and include limiting the amount of business that our dealers can do with these counterparties, and limiting the type of acceptable collateral. Japan does not have these kinds of limits on their dealers who deal in these bankruptcy-vulnerable jurisdictions. Thus, the American companies operating in Japan could potentially have an unlimited number of deals with counterparties in these developing countries. This could put some of our major American financial firms, and thus our economy, at risk.

3. *Types of collateral allowed.* There are significant differences in the treatment of collateral between our margin rule and the Japanese rule. First, while our rules limit daily variation margin to cash for dealer-to-dealer swaps, under Japanese law, variation margin could be in a number of much less liquid instruments. And second, while we require a 25% haircut for certain equities not included in the S&P 500, under Japanese law, equities included in major equity indices of certain designated countries just have a 15% blanket haircut.[5] That means that we require our companies to value equities much more conservatively than under Japanese law. That means that in a crisis, American companies in Japan could be exchanging instruments that are virtually worthless since they cannot be readily converted to cash, thereby putting them in jeopardy.

If these were insignificant differences, I would happily brush them aside and accept this comparability determination as is. But these issues could mean the difference between an orderly bankruptcy, and a disaster overseas that pulls down a significant American financial company, and potentially our economy.

And last, how could we have fixed it?

Fixing this is actually rather simple. We could provide a partial comparability determination—our American businesses could follow the Japanese margin rule except in the areas above where they would have to follow our rule. We have already done this in the current draft in the area of inter-affiliate margin. We would simply extend the same treatment to these three areas as well.

Unfortunately, that common sense approach was not followed here. And that is why I am unable to vote for it. While our two jurisdictions are partly comparable, there are significant areas in which there are material divergences. A partial comparability determination, as described above, would be the best way to strike the balance between international harmonization and protection of American financial companies that are located elsewhere but still directly linked to our economy.

Appendix 4—Statement of Commissioner J. Christopher Giancarlo

When the Commission issued its rule addressing the cross-border application of margin requirements for uncleared swaps in May of this year[1] I expressed my disagreement with the approach the Commission established as overly complex and unduly narrow.[2] I also expressed my concern that the Commission's "element-by-element" methodology for determining when substituted compliance with a foreign regulator's margin regime would be permitted is contrary to the principles-based, holistic analysis the Commission has used in the past in certain circumstances[3] and could result in an impracticable patchwork of U.S. and foreign regulations for cross-border transactions.[4]

My concerns were realized last week when Asian swaps markets ground to a halt amidst confusion about the application of new margin rules to major market participants. Once again, there were reports of counterparties avoiding trading with U.S. persons. I believe this rule's subjectivity and complexity will continue to be a source of regulatory uncertainty at the expense of U.S. financial firms, their employees and the American businesses they serve.

I nevertheless support the comparability determination for Japan. In this instance, the Commission has appropriately recognized that certain differences between the U.S. margin regime and Japan's margin regime achieve comparable outcomes. Wrong approach; right outcome. I therefore vote in favor of the determination.

[FR Doc. 2016–22045 Filed 9–14–16; 8:45 am]

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[3] *See* "Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants," pp. 63–65. ("The Commission notes that the JFSA's [Japan Financial Services Agency] margin requirements with respect to custodial arrangements are less stringent than those of the Final Margin Rule in one material respect. Under the Final Margin Rule, all assets posted by or collected by CSEs as initial margin must be held by one or more custodians that are not the CSE, the counterparty, or margin affiliates of the CSE or the counterparty. The JFSA's margin rules do not prohibit a FIBO/RFI from using an affiliated entity as custodian to hold initial margin collected from counterparties.").

[4] *Id.* at pp. 69–70. ("[W]ith respect to transactions subject to the laws of a non-netting jurisdiction JFSA's margin regime exempts FIBOs/RFIs from the otherwise applicable requirements to collect and post margin. . . . [W]ith respect to non-cleared OTC Derivatives subject to the laws of a jurisdiction that has inherent limitations on the ability of a CSE/FIBO/RFI to post initial margin in compliance with the custodial arrangement requirements of the JFSA's margin rules and the Final Margin Rule . . . [t]he JFSA margin rule does not have the cash-only requirement, nor does it limit transactions to 5% of a FIBO/RFI's total notional of uncleared swaps.").

[5] *Id.* at pp. 58–59. ("[T]he JFSA's requirements are less stringent where they permit the same haircut for all equities (15%) included in major equity indices of certain designated countries while the Final Margin Rule applies a 25% haircut for certain equities not included in the S&P 500. The JFSA's requirements are also less stringent with respect to the eligible collateral for variation margin for non-cleared OTC Derivatives between FIBOs/RFIs that are CSEs and FIBOs/RFIs that are SDs and MSPs (including other CSEs). The Final Margin Rule only permits immediately available cash funds that are denominated in U.S. dollars, another major currency (as defined in § 23.151), or the currency of settlement of the uncleared swap, while the JFSA's requirements would permit any form of eligible collateral (as described above). In addition, the JFSA's margin rules allow eligible collateral in the form of securities issued by bank holding companies, savings and loan holding companies, certain intermediary holding companies, foreign banks, depository institutions, market intermediaries, and margin affiliates of the foregoing, all of which are prohibited by the Final Margin Rule. Finally, the JFSA's margin rules also do not specifically address requirements to monitor the eligibility of posted collateral.").

[1] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818, May 31, 2016.

[2] *Id.* at 34853–54.

[3] As I noted in my dissent, the Commission employs a principles-based, holistic approach for substituted compliance determinations under Commission Regulation 30.10 and for purposes of permitting direct access by U.S. customers to foreign boards of trade. *Id.* at 34853 n.5.

[4] *Id.* at 34853–54.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1986

[Docket Number: OSHA–2011–0841]

RIN 1218–AC58

Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provision of the Seaman's Protection Act, as Amended

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations governing the employee protection (whistleblower) provisions of the Seaman's Protection Act (SPA or the Act), as amended by section 611 of the Coast Guard Authorization Act of 2010. On February 6, 2013, the Occupational Safety and Health Administration (OSHA or the Agency) published an interim final rule (IFR) for SPA whistleblower complaints in the **Federal Register**, requested public comment on the IFR, and the Agency has considered the comments. This final rule finalizes the procedures and time frames for the handling of retaliation complaints under SPA, including procedures and time frames for employee complaints to OSHA, investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing *de novo,* hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) on behalf of the Secretary of Labor (Secretary), and judicial review of the Secretary's final decision. In addition, this final rule provides the Secretary's interpretation of the term "seaman" and addresses other interpretive issues raised by SPA.

DATES: This final rule is effective on September 15, 2016.

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SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted SPA as section 13 of the Coast Guard Authorization Act of 1984, Public Law 98–557, 98 Stat. 2860 (1984). SPA protected seamen from retaliation for reporting a violation of Subtitle II of Title 46 of the U.S. Code, which governs vessels and seamen, or a regulation promulgated under that subtitle. S. Rep. No. 98–454, at 11 (1984). Congress passed SPA in response to *Donovan* v. *Texaco,* 720 F.2d 825 (5th Cir. 1983), in which the Fifth Circuit held that the whistleblower provision of the Occupational Safety and Health Act (OSH Act) did not cover a seaman who had been demoted and discharged from his position because he reported a possible safety violation to the U.S. Coast Guard. S. Rep. No. 98–454, at 12 (1984). This original version of SPA prohibited "[a]n owner, charterer, managing operator, agent, master, or individual in charge of a vessel" from retaliating against a seaman "because the seaman in good faith has reported or is about to report to the Coast Guard that the seaman believes that" a violation of Subtitle II had occurred. Public Law 98–557, sec. 13(a), 98 Stat. at 2863. It permitted seamen to bring actions in U.S. district courts seeking relief for alleged retaliation in violation of the Act. *Id.* sec. 13(a), 98 Stat. at 2863–64.

In 2002, Congress amended SPA. Section 428 of the Maritime Transportation Security Act of 2002, Public Law 107–295, 116 Stat. at 2064 (2002), altered both the protections afforded and remedies permitted by the Act. First, Congress removed the specific list of actors who were prohibited from retaliating against seamen and replaced that text with "[a] person." Public Law 107–295, sec. 428(a), 116 Stat. at 2127. Second, Congress expanded the existing description of protected activity to include reports to "the Coast Guard or other appropriate Federal agency or department," rather than only to the Coast Guard, and violations "of a maritime safety law or regulation prescribed under that law or regulation," rather than only of Subtitle II and its accompanying regulations. *Id.* Third, Congress added a second type of protected activity; a seaman who "refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public" was granted protection from retaliation for such a refusal. *Id.* The new text clarified that, "[t]o qualify for protection against the seaman's employer under paragraph (1)(B), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition." *Id.* The amended statute further explained that "[T]he circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer." Public Law 107–295, sec. 428, 116 Stat. at 2127.

Congress made additional changes to the Act, including those that led OSHA to initiate this rulemaking, on October 15, 2010. Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111–281, 124 Stat. at 2905 (2010), made further additions to the list of protected activities under SPA and fundamentally changed the remedies section of the Act. Section 611 added to subsection (a) the following protected activities: The seaman testified in a proceeding brought to enforce a maritime safety law or regulation; the seaman notified, or attempted to notify, the vessel owner or the Secretary [of the department in which the Coast Guard is operating [1]] of a work-related personal injury or work-related illness of a seaman; the seaman cooperated with a safety investigation by the Secretary [of the department in which the Coast Guard is operating] or the National Transportation Safety Board; the seaman furnished information to the Secretary [of the department in which the Coast Guard is operating], the National Transportation Safety Board, or any other public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; and the seaman accurately reported hours of duty under this part.

Congress replaced section (b) of SPA, which had provided a private right of action to seamen and described relief a court could award, in its entirety. The new text provides that a seaman alleging discharge or discrimination in violation of subsection (a) of this section, or another person at the seaman's request, may file a complaint with respect to such allegation in the same manner as a complaint may be filed under subsection (b) of section 31105 of title 49. Such complaint is subject to the procedures, requirements, and rights described in that section, including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of that section, and the requirement to bring a civil action under subsection (d) of that section.

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[1] The text of 46 U.S.C. 2114 refers to "the Secretary," defined for purposes of Part A of Subtitle II as "the Secretary of the department in which the Coast Guard is operating." 46 U.S.C. 2101(34). The Coast Guard is currently part of the Department of Homeland Security.

Id. Section 31105 of title 49 is the whistleblower protection provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C. 31105. STAA provides that initial complaints regarding retaliation under that statute are to be filed with and handled by the Secretary of Labor (Secretary), sec. 31105(b)–(e), and the Secretary has delegated his authority in this regard to OSHA. Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012). The Secretary has also delegated to OSHA his authority under SPA. *Id. at* 3913. Hearings on objections to findings by the Assistant Secretary for OSHA (Assistant Secretary) are conducted by the Office of Administrative Law Judges, and appeals from decisions by ALJs are decided by the Department of Labor's Administrative Review Board (ARB). *Secretary's* Order 1–2010, 75 FR 3924–01 (Jan. 25, 2010).

OSHA is promulgating this final rule to finalize procedures for the handling of whistleblower protection complaints under SPA and address certain interpretative issues raised by the statute. To the extent possible within the bounds of applicable statutory language, these regulations are designed to be consistent with the procedures applied to claims under STAA, and the other whistleblower protection statutes administered by OSHA, including the Energy Reorganization Act (ERA), 42 U.S.C. 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. 42121; Title VIII of the Sarbanes-Oxley Act of 2002 (SOX), 18 U.S.C. 1514A; and the Consumer Product Safety Improvement Act, 15 U.S.C. 2087.

II. Summary of Statutory Procedures

As explained above, SPA adopts the process for filing a complaint established under subsection (b) of STAA. 46 U.S.C. 2114(b). It further incorporates the other "procedures, requirements, and rights described in" STAA, *id.,* described below. OSHA therefore understands SPA to incorporate STAA subsections (b) through (g). SPA's text could cause confusion regarding which sections of STAA it adopts by referring, in some cases incorrectly,[2] to certain sections while not mentioning others.[3] The text refers to those sections following the word "including," however, with no suggestion that the subsequent list is meant to be exclusive. Accordingly, OSHA will not treat it as such, and, as explained below, promulgates regulations to implement the procedures described in 49 U.S.C. 31105(b)–(g). OSHA does not read SPA as incorporating 49 U.S.C. 31105 (a), (h), (i) and (j) because those provisions are substantive and specific to STAA or agencies other than the Department of Labor rather than describing "procedures, requirements, and rights." The statutory procedures applicable to SPA claims are summarized below.

Filing of SPA Complaints

A seaman, or another person at the seaman's request, alleging a violation of SPA, may file a complaint with the Secretary not later than 180 days after the alleged retaliation.

Legal Burdens of Proof for SPA Complaints

STAA states that STAA whistleblower complaints will be governed by the legal burdens of proof set forth in AIR21, 49 U.S.C. 42121(b), which contains whistleblower protections for employees in the aviation industry. 49 U.S.C. 31105(b)(1). Accordingly, these burdens of proof also govern SPA whistleblower complaints.

Under AIR21, a violation may be found only if the complainant demonstrates that protected activity was a contributing factor in the adverse action described in the complaint. 49 U.S.C. 42121(b)(2)(B)(iii). Relief is unavailable if the employer demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the protected activity. 49 U.S.C. 42121(b)(2)(B)(iv); *Vieques Air Link, Inc.* v. *Dep't of Labor,* 437 F.3d 102, 108–09 (1st Cir. 2006) (*per curiam*) (burdens of proof under AIR21); *Formella* v. *U.S. Dep't of Labor,* 628 F.3d 381, 389 (7th Cir. 2010) (explaining that because it incorporates the burdens of proof set forth in AIR21, STAA requires only a showing that the protected activity was a contributing factor, not a but-for cause, of the adverse action.).

Written Notice of Complaint and Findings

Under 49 U.S.C. 31105(b), upon receipt of the complaint, the Secretary must provide written notice of the filing of the complaint to the person or persons alleged in the complaint to have violated the Act (respondent). 49 U.S.C. 31105(b).

Within 60 days of receipt of the complaint, the Secretary must conduct an investigation of the allegations, decide whether it is reasonable to believe the complaint has merit, and provide written notification to the complainant and the respondent of the investigative findings.

Remedies

If the Secretary decides it is reasonable to believe a violation occurred, the Secretary shall include with the findings a preliminary order for the relief provided for under 49 U.S.C. 31105(b)(3). This order shall require the respondent to take affirmative action to abate the violation; reinstate the complainant to the former position with the same pay and terms and privileges of employment; and pay compensatory damages, including back pay with interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees. Additionally, if the Secretary issues a preliminary order and the complainant so requests, the Secretary may assess against the respondent the costs, including attorney fees, reasonably incurred by the complainant in bringing the complaint. Punitive damages of up to $250,000.00 are also available.

Hearings

STAA also provides for hearings. 49 U.S.C. 31105(b), Specifically, the complainant and the respondent have

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[2] Specifically, the Act's adoption of STAA's "procedures, requirements, and rights" is followed by the text "including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of [STAA], and the requirement to bring a civil action under subsection (d) of that section." 46 U.S.C. 2114(b). But section (c) addresses *de novo* review in the district court if the Secretary has not issued a final decision after 210 days; section (d) addresses filing a petition for review after receiving an adverse order following a hearing; and section (e) provides that "[i]f a person fails to comply with an order issued under subsection (b) of this section, the Secretary of Labor shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred." 49 U.S.C. 31105(c)–(e).

[3] Section (f) declares that STAA does not preempt any other federal or state law safeguarding against retaliation; section (g) declares that STAA does not diminish any legal rights of any employee, nor may the rights of the section be waived; section (h) prohibits the disclosure by the Secretary of Transportation or the Secretary of Homeland Security of the identity of an employee who provides information about an alleged violation of the statute except, under certain circumstances, to the Attorney General; section (i) creates a process for reporting security problems to the Department of Homeland Security; and section (j) defines the term "employee" for purposes of STAA. 49 U.S.C. 31105(f)–(j).

30 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, it is to be conducted expeditiously. The Secretary shall issue a final order within 120 days after the conclusion of any hearing. The final order may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the respondent may enter into a settlement agreement that terminates the proceeding.

De Novo Review

STAA provides for *de novo* review of a whistleblower claim by a United States district court in the event that the Secretary has not issued a final decision within 210 days after the filing of a complaint and the delay is not due to the complainant's bad faith. 49 U.S.C. 31105(c). The provision states that the court will have jurisdiction over the action without regard to the amount in controversy and that the case will be tried before a jury at the request of either party.

Judicial Review

STAA provides that within 60 days of the issuance of the Secretary's final order following a hearing, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation. 49 U.S.C. 31105(d).

Civil Actions To Enforce

STAA provides that if a person fails to comply with an order issued by the Secretary under 49 U.S.C. 31105(b) the Secretary of Labor "shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred." 49 U.S.C. 31105(e).

Preemption

STAA clarifies that nothing in the statute preempts or diminishes any other safeguards against discrimination provided by Federal or State law. 49 U.S.C. 31105(f).

Employee Rights

STAA states that nothing in STAA shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. 49 U.S.C. 31105(g). It further states that rights and remedies under 49 U.S.C. 31105 "may not be waived by any agreement, policy, form, or condition of employment."

III. Prior Rulemaking

On February 6, 2013, the OSHA published an IFR for SPA whistleblower complaints in the **Federal Register** establishing the procedures and time frames for the handling of retaliation complaints under SPA, including procedures and time frames for employee complaints to OSHA, investigations by OSHA, objections to OSHA findings and preliminary orders, hearings by ALJs, review of ALJ decisions by the ARB on behalf of the Secretary, and judicial review of the Secretary's final decision. In addition to promulgating the IFR, OSHA's notice included a request for public comment on the interim rules by April 8, 2013. In response to the IFR, two organizations—the Chamber of Shipping of America and the Transportation Trades Department, AFL–CIO, filed comments with the agency within the public comment period. In addition, two individuals—J.I.M. Choate of Stamford, Connecticut, and Lee Luttrell of Las Vegas, Nevada, also filed comments with the agency within the public comment period. In general, commenters supported the IFR's provisions. For example, the Transportation Trades Department stated that the IFR provided "clarity to workers on the actions they can take to remedy dangerous situations, while empowering them with a well-defined route to pursue when they've been wronged." It also expressed support for the protection of internal complaints. Docket ID OSHA–2011–0841–0005. Only three revisions to the rule were suggested by commenters. First, Mr. Choate recommended that references in the rule to "ALJs" be changed to "judges" because he thought that "ALJ" was "too informal." Docket ID OSHA–2011–0841–0002. However, OSHA's use of the term "ALJ" appears in many of its other whistleblower protection regulations and is useful in distinguishing between administrative law judges and Article III judges. The Secretary therefore declines to follow this suggestion. Second, the Chamber asked the Secretary to adopt a limited exemption from the work refusal provision in section 1986.102(c)(2) for emergency situations. Third, the Chamber asks that the remedies provisions of sections 1986.109 and 1986.110 include provisions allowing the award of attorney's fees and costs against unsuccessful claimants. Docket ID OSHA–2011–0841–0004. The Secretary also disagrees with these suggestions, which will be discussed further below. Thus, with the exception of coverage provisions, discussed below, the Secretary is carrying over all of the provisions of the IFR into this final rule with only minor technical revisions.

IV. Summary and Discussion of Regulatory Provisions

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

Section 1986.100 Purpose and Scope

This section describes the purpose of the regulations implementing the SPA whistleblower protection provision and provides an overview of the procedures contained in the regulations.

Section 1986.101 Definitions

This section includes general definitions applicable to the SPA whistleblower provision. Most of the definitions are of terms common to whistleblower statutes and are defined here as they are elsewhere. Some terms call for additional explanation.

SPA prohibits retaliation by a "person." Title 1 of the U.S. Code provides the definition of this term because there is no indication in the statute that any other meaning applies. Accordingly, "person . . . include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." 1 U.S.C. 1. This list, as indicated by the word "include," is not exhaustive. *See Fed. Land Bank* v. *Bismarck Lumber Co.,* 314 U.S. 95, 100 (1941) ("[T]he term 'including' is not one of all embracing definition, but connotes simply an illustrative application of the general principle." (citation omitted)). Paragraph (j) accordingly defines "person" as "one or more individuals or other entities, including but not limited to corporations, companies, associations, firms, partnerships, societies, and joint stock companies."

SPA protects seamen from retaliation for making certain reports and notifications. 46 U.S.C. 2114(a)(1)(A), (D), (G). Paragraphs (h) and (k) define "report" and "notify" both to include "any oral or written communications of a violation." This interpretation of the statute is consistent with a plain reading of the statutory text and best fulfills the purposes of SPA. *See Gaffney* v. *Riverboat Servs. of Ind.,* 451 F.3d 424, 445–46 (7th Cir. 2006) (explaining that to interpret SPA's reference to a "report" as requiring a formal complaint "would narrow the statute in a manner that Congress clearly avoided, and, in the process, would frustrate the clear purpose of the provision"). It is also consistent with the legislative history of the statute, which indicates that Congress meant SPA to respond to *Donovan* v. *Texaco,* 720 F.2d 825 (5th Cir. 1983), a case in which a seaman had told the Coast Guard about an unsafe condition by telephone. S. Rep. No. 98–454, at 11; *Donovan,* 720 F.2d at 825; *see also Gaffney,* 451 F.3d at 446 (reasoning that SPA's legislative history, "coupled with Congress' decision not to define 'report' in the statute or in the course of discussing *Donovan* in the relevant legislative history," indicates that SPA "does not require a formal complaint, or even a written statement, as a prerequisite to statutory whistleblower protection"); *cf. Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 563 U.S. 1 (2011) (holding that the provision of the Fair Labor Standards Act that prohibits employers from retaliating against an employee because such employee has "filed any complaint" protects oral complaints).

In addition, SPA protects seaman complaints and testimony related to "maritime safety law[s] or regulation[s]." Paragraph (g) defines this term as including "any statute or regulation regarding health or safety that applies to any person or equipment on a vessel." This definition clarifies the meaning of this term in two respects. First, though the statutory text refers to "safety" the Secretary finds that Congress did not intend to exclude regulations that address health hazards; rather, it is apparent that no such distinction was intended. *Compare* 46 U.S.C. 2114(a)(1)(B) (protecting refusal to perform a duty that would result in a serious injury) with (a)(2) (clarifying that circumstances that would justify a refusal to work under (a)(1)(B) are those that present a "real danger of injury or serious impairment of health"); *see also id.* (a)(1)(D) (protecting reports of injuries and illnesses). The definition makes clear that laws or regulations addressing either maritime safety or health are included.

Second, because working conditions on vessels can be subject to regulation by many agencies, the Secretary interprets "maritime safety law or regulation" to include all regulations regarding health or safety that apply to any person or equipment on a vessel under the circumstances at issue. The statute or regulation need not exclusively or explicitly serve the purpose of protecting the safety of seamen, or promoting safety on vessels, to fall within the meaning of this provision of SPA.

Section 2214(a)(1)(D) of SPA protects a seaman's notification of the "vessel owner" of injuries and illnesses. This would include all notifications to agents of the owner, such as the vessel's master. 2 Robert Force & Martin J. Norris, *The Law of Seamen* § 25–1 (5th ed. 2003). Other parties that may fall within the meaning of "vessel owner" include an owner pro hac vice, operator, or charter or bare boat charterer. 33 U.S.C. 902(21) (defining, for purposes of the Longshore and Harbor Workers' Compensation Act (LHWCA), the entities liable for negligence of a vessel); *Helaire* v. *Mobil Oil Co.,* 709 F.2d 1031, 1041 (5th Cir. 1983) (referring to this list of entities as "the broad definition of 'vessel owner' under 33 U.S.C. 902(21)"). Paragraph (q) defines "vessel owner" as including "all of the agents of the owner, including the vessel's master."

SPA protects "a seaman" from retaliation, but it does not include a definition of "seaman." Thus, OSHA is relying on the Senate Report that accompanied the original, 1984 version of SPA. Committee Reports on a bill are useful sources for finding the legislature's intent because they represent the considered and collective understanding of those Members of Congress involved in drafting and studying proposed legislation. *Garcia* v. *United States,* 469 U.S. 70, 76 (1984). The Senate Report indicates that SPA was originally intended to provide a remedy for workers whose whistleblower rights under section 11(c) of the OSH Act might be not be available in a circuit that follows *Donovan* v. *Texaco,* 720 F.2d 825 (5th Cir. 1983).[4] *See* S. Rep. No. 98–454, at 11–12 (1984). The Senate Report also provides specific insight as to the definition of "seaman," stating that "the Committee intends the term 'seaman' to be interpreted broadly, to include any individual engaged or employed in any capacity on board a vessel owned by a citizen of the United States." *Id.* at 11.

OSHA considered three basic approaches for defining the term "seaman": (a) Mirroring the one established by the Jones Act, 46 U.S.C. 30104, which reflects general maritime law; (b) as a "gap filler" available only in situations where workers arguably lack protection under section 11(c) of the OSH Act because of *Texaco;* or (c) using the broader definition of "seaman" suggested by the legislative history of SPA discussed above.

First, OSHA rejected adopting a definition of "seaman" for SPA that mirrors the one established by case law under the Jones Act. The Jones Act provides that a "seaman" injured in the course of employment may bring a civil action against his or her employer, 46 U.S.C. 30104, but, like SPA, the Jones Act does not define the term "seaman." Looking to general maritime law, the Supreme Court has defined the term as including those who have an employment-related connection to a vessel in navigation that contributes to the function of the vessel or to the accomplishment of its mission, even if the employment does not aid in navigation or contribute to the transportation of the vessel, *McDermott International, Inc.* v. *Wilander,* 498 U.S. 337, 355 (1991). Importantly, the Supreme Court views the term "seaman" as excluding land-based workers; that is, a seaman "must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and nature." *Chandris* v. *Latsis,* 515 U.S. 347, 368 (1995).

OSHA is concerned that the Jones Act definition of "seaman" is more restrictive than the definition of the term reflected in the legislative history of the SPA. Were OSHA to adopt the Jones Act definition here, certain workers who are employed on vessels in significant ways, but who are not "seamen" for purposes of the Jones Act, would not be protected. For example, certain riverboat pilots spend substantial time aboard a vessel in furtherance of its purpose, but do not have a connection to a particular vessel or group of vessels, so they have been found not to be covered under the Jones Act. *Bach* v. *Trident Steamship Co., Inc.,* 920 F.2d 322, *aff'd after remand,* 947 F.2d 1290 (5th Cir. 1991); *Blancq* v. *Hapag-Lloyd A.G.,* 986 F. Supp. 376, 379 (E.D. La. 1997). Moreover, there is at least a possibility that under the *Texaco* analysis, a court would find that such pilots also lack section 11(c) rights when reporting safety violations aboard vessels on which they are working.

Second, OSHA rejected the approach of defining "seaman" as applying only to workers who arguably are not covered by section 11(c). The legislative history shows that Congress originally passed the SPA in response to *Texaco:* "This section responds to *Donovan* v. *Texaco,* (720 F.2d 825 5th Cir. 1983)) in which a seaman was demoted and ultimately discharged from his job for reporting a possible safety violation to the Coast Guard . . . [This section] establishes a new legal remedy for seamen, to protect them against discriminatory action due to their reporting a violation of Subtitle II to the Coast Guard. The Amendment creates a private right of action similar but not identical to that in OSH Act section 11(c).” S. Rep. No. 98–454, at 11–12 (1984). But the legislative history in 2010 suggests a broader definition for “seaman,” which includes workers who may also be covered by section 11(c). On a more practical level, OSHA could not fashion a clear definition of “seaman” that squarely fills the gap arguably left by *Texaco* without requiring agency investigators to conduct a complex case-by-case analysis of whether each SPA complainant is exempt from the OSH Act under the rationale of *Texaco,* a holding with which the Department does not agree.

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[4] Nothing in this preamble should be read to suggest that OSHA agrees with the holding or rationale of *Texaco.*

Thus, the final rule adopts the third option—the broader definition of “seaman” as clarified in the legislative history of SPA. The first sentence of paragraph (m) incorporates the language of the Senate report to define “seaman” insofar as the term includes “any individual engage or employed in any capacity on board” certain types of vessels. As indicated in the report, and consistent with the remedial purposes of whistleblower protection statutes like SPA, OSHA intends that the regulatory language be construed broadly. *Whirlpool Corporation* v. *Marshall,* 445 U.S. 1, 13 (1980); *Bechtel Const. Co.* v *Sec'y of Labor,* 50 F.3d 926, 932 (11th Cir. 1995). Workers who are seamen for purposes of the Jones Act or general maritime law, *see, e.g., Chandris, Inc.* v. *Latsis,* 515 U.S. 347, 355 (1995), are covered by the definition, as are land-based workers, if they are “engaged or employed . . . on board a vessel” for some part of their duties. H. Rep. No. 111–303, pt. 1, at 119 (2009) (noting that SPA extends protections to “maritime workers”).

Finally, paragraph (m) includes an additional sentence indicating that former seamen and applicants are included in the definition. Such language is included in the definition of “employee” in the regulations governing other OSHA-administered whistleblower protection laws, such as STAA (29 CFR 1978.101(h)), the National Transit Systems Security Act and the Federal Railroad Safety Act (29 CFR 1982.101(d)), SOX (29 CFR 1980.101(g)), and the OSH Act (29 CFR 1977.5(b)). This interpretation is consistent with the Supreme Court's reading of the term “employee” in 42 U.S.C. 2000e–3a, the anti-retaliation provision of Title VII of the Civil Rights Act of 1964, to include former employees. *Robinson* v. *Shell Oil Co.,* 519 U.S. 337 (1997). Among the Court's reasons for this interpretation was the lack of temporal modifiers for the term “employee”; the reinstatement remedy, which only applies to former employees; and the remedial purpose of preventing workers from being deterred from whistleblowing because of a fear of blacklisting. These reasons apply equally to SPA and the other whistleblower provisions enforced by OSHA.

In the IFR, OSHA sought comments on these alternative approaches to defining “seaman,” and received no objections to the approach described above. OSHA has retained the portion of the definition dealing with the functions of a seaman in the final rule. The definition of “seaman” adopted in these regulations is based on and limited to SPA. Nothing should be inferred from the above discussion or the regulatory text about the meaning of “seaman” under the OSH Act or any other statute administered by the Department of Labor.

Part of the definition of “seaman” in the final rule, however, has changed from that of the IFR. As in the IFR, the definition of “seaman” limits the term to individuals “engaged or employed on board” a subset of vessels. Both the IFR and the final rule protect individuals working on “any vessel owned by a citizen of the United States,” but the final rule also extends coverage to individuals engaged on “a U.S. flag vessel.” Because all U.S.-flag vessels must be owned by citizens of the United States, as defined in 46 U.S.C. 12103 (providing general eligibility requirements for vessel documentation) and 46 CFR part 67 Subpart C (defining citizen-owners of vessels for the purposes of Coast Guard regulations), covering all individuals employed or engaged on U.S.-flag vessels would effectuate the Congressional intent that individuals working on any vessel owned by a citizen of the United States be regarded as seamen under SPA. S. Rep., at 11. Furthermore, since most U.S.-flag vessels are required to comply with many Coast Guard maritime safety regulations, such as those in 46 CFR Chapter I, Subchapter I (see 46 CFR 90.05–1) (inspected vessels), 46 CFR Chapter I, Subchapter C, Part 24 (*see* 46 CFR 24.05–1(a) (uninspected vessels), and 46 CFR Chapter I, Subchapter C, Part 28 (*see* 46 CFR 28.30(a)) (uninspected commercial fishing industry vessels), covering those who work aboard U.S.-flag vessels will effectuate one of the main purposes of SPA—to encourage the reporting of violations of maritime safety regulations. 46 U.S.C. 2114(a)(1)(A). Moreover, determining whether a vessel is a U.S.-flag vessel is easy for those who work aboard vessels, as well as for OSHA investigators. Also, members of the Armed Forces are not covered under SPA in order not to interfere with military necessities. As noted above, OSHA has retained within the final rule's definition of “seaman,” individuals working on vessels owned by “a citizen of the United States.” This part of the definition is still relevant because it provides coverage to employees of foreign-flagged vessels owned by U.S. citizens.

As in the IFR, the final rule defines the term “Citizen of the United States,” but OSHA has changed that definition. The IFR defined “citizen of the United States” in 29 CFR 1986.101(d) (2013) as an individual who is a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)), The IFR also defined the phrase to include a corporation, partnership, association, or other business entity if the controlling interest is owned by citizens of the United States. The controlling interest in a corporation is owned by citizens of the United States if title to the majority of the stock in the corporation is vested in citizens of the United States, the majority of the voting power in the corporation is vested in citizens of the United States, there is no contract or understanding by which the majority of the voting power in the corporation may be exercised, directly or in directly, on behalf of a person not a citizen of the United States, and there is no other means by which control of the corporation is given to or permitted to be exercised by a person not a citizen of the United States.. The definition also stated that a corporation is only a citizen of the United States if it is incorporated under the laws of the United States or a State, its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States, and no more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

OSHA is retaining the portion of that definition dealing with the criteria for an individual to be a United States citizen for the purposes of SPA. As before, a natural person is a “citizen of the United States” if he or she is a U.S. citizen for purposes of the Immigration and Nationality Act—the test used to determine U.S. citizenship for natural persons in 46 U.S.C. 104, which applies to all of Title 46 of the United States Code on shipping. OSHA is also retaining the requirement that the controlling interest of a corporation, partnership, association, or other business entity interest be owned by citizens of the United States, but, after further evaluation of relevant statutory provisions and case law, OSHA has decided to substantially simplify the description of what it means for U.S. citizens to own a "controlling interest" in a corporation, partnership, association, or other business entity. The lengthy provisions of the IFR setting forth these criteria have been replaced with a straightforward explanation that the controlling interest in a corporation is owned by citizens of the United States if a majority of the stockholders are citizens of the United States.

Finally, OSHA has expressly included corporations "incorporated under the laws of the United States or a State," any corporation, partnership, association, or other business entity "whose principal place of business or base of operations is in a State," and federal and state governmental entities within definition of "Citizen of the United States."

OSHA decided to make these changes for a number of reasons. First, the IFR definition of "Citizen of United States" with respect to corporate and other juridical entities was derived from a subtitle of Title 46 of the United States Code, which is not as closely related to the purposes of SPA as the subtitle in which SPA is located. The language of the IFR specifying what connections a corporation must have with the United States in order to be classified as a "Citizen of the United States" was derived from 46 U.S.C. 50501. That provision specifies which corporations and other entities are deemed to be citizens of the United States for the purposes of Subtitle V of Title 46. That subtitle promotes the development of the U.S. merchant marine through financial assistance and promotional programs, among other things. SPA, however, is in Subtitle II, Vessels and Seamen, which has a major emphasis on maritime safety. *See, e.g.,* Part A—General Provisions (including a provision on penalties for the negligent operation of vessels (46 U.S.C. 2302) and SPA (46 U.S.C. 2114); Part B—Inspection and Regulation of Vessels, including the provisions authorizing many Coast Guard maritime safety regulations, such as 46 U.S.C. 3306 (inspected vessels), 46 U.S.C. 4102 (uninspected vessels), and 46 U.S.C. 4502 (uninspected commercial fishing industry vessels)). Subtitle II also has provisions on the documentation of U.S. flag vessels, including the criteria for U.S. citizen ownership of vessels. 46 U.S.C. 12103. One of the main purposes of SPA is to encourage the reporting of violations of Coast Guard maritime safety regulations. 46 U.S.C. 2114(a)(1)(A) (prohibiting retaliation against a seaman for reporting a violation of maritime safety regulations). Thus, the provisions regarding U.S. citizen ownership of vessels in 46 U.S.C. 50501, which is in Subtitle V, are not appropriate in this context.

Second, the IFR's criteria for determining if a corporation, partnership, association, or other business entity is a U.S. citizen were unduly restrictive and thus did not effectuate the Congressional intent that the term "seaman" in SPA be construed broadly. S. Rep. at 11. As can be seen from the IFR text above, ownership by a U.S. citizen of a controlling interest in the corporation was the sole basis for that corporation's U.S. citizenship, and ownership of a controlling interest was, itself, defined narrowly. The vesting of title to the majority of the corporation's stock in U.S. citizens had to be free of any trust or fiduciary obligation in favor of a foreign citizen, a majority of the voting power had to be vested in U.S. citizens; there could be no contract or understanding by which a majority of the voting power in the corporation could have been exercised, directly or indirectly, on behalf of a foreign citizen; and there could be no other means by which control of the corporation was given to or permitted to be exercised by a foreign citizen. Furthermore, the IFR provided that the corporation had to be incorporated under the laws of the United States or a State; its chief executive officer, by whatever title, and the chairman of its board of directors had to be citizens of the United States; and no more of its directors could be noncitizens than a minority of the number necessary to constitute a quorum. These qualifications unnecessarily narrowed the scope of the term "seaman" in contradiction to the Senate Report, which stated that the term "seaman" should be read broadly. S. Rep. at 11.

Third, because the test of U.S. citizenship for corporations, partnerships, associations, or other business entities turned on the criteria for ownership of a controlling interest of these entities, most of the definition was complex. Determining whether the criteria had been met would have been difficult and time-consuming for workers aboard vessels who may want to report violations of maritime safety laws or injuries or who want to refuse to perform dangerous work, for OSHA whistleblower investigators, and even for supervisors aboard the vessels.

Finally, OSHA decided to expressly include corporations incorporated under the laws of the United States or any State and corporations, partnerships, associations, and other business entities, whose principal places of business or bases of operations are in States within the definition of "Citizen of the United States" because entities such as these have long been considered by courts to be U.S. citizens in the maritime context.

In *Lauritzen* v. *Larsen,* 345 U.S. 571 (1953), a leading maritime law decision, the Supreme Court set forth a multifactor test for determining whether United States law applied to a maritime tort claim. One of the most important factors is the citizenship of the defendant shipowner, *Id.* at 587. In reviewing this factor the Court cited with approval *Gerradin* v. *United States,* 60 F.2d 927 (2nd Cir.), in which the court regarded a vessel owner incorporated in New York as a citizen of the United States and imposed liability for a maritime injury to a cook's mate aboard that vessel, despite the fact that the vessel flew a foreign flag. *Lauritzen,* 345 U.S. at 587, n.24; *see also Farmer* v. *Standard Dredging Corp.,* 167 F. Supp. 381, 383–84 (D. Delaware 1958) (applying United States law to maritime injury because shipowner was a Delaware corporation); *cf.,* 28 U.S.C. 1332(c)(1) (providing that for the purposes of federal court diversity jurisdiction, a corporation is citizen of state in which it is incorporated). Since SPA bans retaliation for the reporting of maritime injuries, *see* 46 U.S.C. 2114(a)(1)(D) and (F), and other related activities, such as the reporting of violations of maritime safety regulations, designed to prevent injuries, *see* 46 U.S.C. 2114(a)(1)(A), it is appropriate to look to a maritime case such as Lauritzen for guidance.

A corporation, partnership, association, or other business entity will also be regarded as a citizen of the United States if its principal place of business or base of operations is in a State. The location of a shipowner's principal place of business or base of operations in the United States is an important factor in favor of applying U.S. maritime law. *Hellenic Lines Limited* v. *Rhoditis,* 398 U.S. 306, 308–309 (1970) (applying U.S. law to claims by a permanent resident alien seaman aboard foreign-flag vessel where base of operations of defendant corporate shipowner was in the United States); cf. 28 U.S.C. 1332(c) (providing that for the purposes of federal court diversity jurisdiction, a corporation is citizen of State in which its principal place of business is located).

As discussed above, the test for determining if a U.S. citizen "owns a controlling interest" in the corporation has been simplified to include situations in which a majority of the corporation's stockholders are U.S. citizens. This interpretation is based on decisions analyzing the *Lauritzen* factors, which have relied on U.S. citizen stockholder ownership of a foreign corporation to apply U.S. law in maritime cases where the vessel was owned by a foreign corporation. *Sosa* v. *M/V Lago Izabal,* 736 F.2d 1028, 1032 (5th Cir. 1984); *Antypas* v. *Cia. Maritima San Basilio, S. A.,* 541 F.2d 307, 310 (2nd Cir. 1976); *Moncada* v. *Lemuria Shipping Corp.,* 491 F.2d 470, 473 (2nd Cir. 1974); *Rainbow Line, Inc.* v. *M/V Tequila,* 480 F.2d 1024, 1026–1027 (2nd Cir. 1973); *Bartholomew* v. *Universe Tankships,* 263 F.2d 437, 442 (2nd Cir. 1959).

The term "Citizen of the United States" is also defined to include governmental entities "of the Federal Government of the United States, of a State, or of a political subdivision of State." This interpretation is based on one of the Coast Guard's definitions of citizenship for the purposes of determining eligibility for vessel documentation. *See* 46 CFR 67.41 (providing that a governmental entity is citizen for purposes of vessel documentation); 46 CFR 67.3 (defining the term "State" to include a political subdivision thereof); *cf.* 46 U.S.C. 31102 (providing that a civil action in personam in admiralty may be brought against the United States for damages caused by a public vessel of the United States).

Paragraph (p) defines "vessel," a term used in the definition of "seaman" and in SPA itself. This definition is taken from Title 46 of the U.S. Code and "includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 46 U.S.C. 115; *see also* 1 U.S.C. 3; *Stewart* v. *Dutra Constr. Co.,* 543 U.S. 481, 496–97 (2005) (analyzing the meaning of the term "vessel," as defined by 1 U.S.C. 3, and concluding that "a 'vessel' is a watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment," and thus excludes ships "taken out of service, permanently anchored, or otherwise rendered practically incapable of maritime transport").

Section 1986.102 Obligations and Prohibited Acts

This section describes the activities that are protected under SPA and the conduct that is prohibited in response to any protected activities. These protected activities are set out in the statute, as described above. Consistent with OSHA's interpretation of other anti-retaliation provisions, the prohibited conduct includes any form of retaliation, including, but not limited to, discharging, demoting, suspending, harassing, intimidating, threatening, restraining, coercing, blacklisting, or disciplining a seaman. Section 1986.102 tracks the language of the statute in defining the categories of protected activity.

As with other whistleblower statutes, SPA's provisions describing protected activity are to be read broadly. *See, e.g., Clean Harbors Envtl. Servs., Inc.* v. *Herman,* 146 F.3d 12, 20–21 (1st Cir. 1998) (expansively construing language in STAA to facilitate achieving the policy goals of encouraging corporate compliance with safety laws and employee reports of violations of those laws); *Bechtel Constr. Co.* v. *Sec'y of Labor,* 50 F.3d 926, 932–33 (11th Cir. 1995) ("[I]t is appropriate to give a broad construction to remedial statutes such as nondiscrimination provisions in federal labor laws."); *Passaic Valley Sewerage Comm'rs* v. *U.S. Dep't of Labor,* 992 F.2d 474, 478 (3d Cir. 1993) (discussing the "broad remedial purpose" of the whistleblower provision in the Clean Water Act in expansively interpreting a term in that statute). Indeed, SPA's prohibition of discharging or "in any manner" discriminating against seamen indicates Congress's intent that the provision have broad application. *See NLRB* v. *Scrivener,* 405 U.S. 117, 122 (1972) (determining that language in the National Labor Relations Act should be read broadly because "the presence of the preceding words 'to discharge or otherwise discriminate' reveals, we think, particularly by the word 'otherwise,' an intent on the part of Congress to afford broad rather than narrow protection to the employee"); *Phillips* v. *Interior Board of Mine Operations Appeals,* 500 F.2d 772, 782–83 (D.C. Cir. 1974) (relying on *Scrivener* in reasoning that the words "in any other way discriminate" in the Mine Safety Act support a broad reading of that Act's protections for miners). Likewise, the statement in the Senate Report regarding SPA that the term "seaman" is to be "interpreted broadly" further supports the premise that Congress did not intend that SPA be construed narrowly. S. Rep. No. 98–454, at 11 (1984).

OSHA therefore will interpret each of the seven types of protected activity listed in the Act broadly. Moreover, while SPA, unlike other whistleblower statutes, does not contain a provision directly protecting all internal complaints by seamen to their superiors, many such complaints are covered under the seven specific categories listed in the Act. Protection of internal complaints is important because it "leverage[s] the government's limited enforcement resources" by encouraging employees to report substandard working conditions to their employers. *Clean Harbors,* 146 F.3d at 19–20. Such protections promote the resolution of violations without drawn-out litigation, and the "failure to protect internal complaints may have the perverse result of encouraging employers to fire employees who believe they have been treated illegally before they file a formal complaint." *Minor* v. *Bostwick Laboratories, Inc.,* 669 F.3d 428, 437 (4th Cir. 2012). The Transportation Trades Department, AFL–CIO, supported this approach in its comment, noting that "internal communication aids in keeping vessels safe." Docket ID OSHA–2011–0841–0005. In addition, in the maritime context, a seaman on a vessel at sea may not be able to contact the authorities to correct a dangerous condition, and his or her only recourse will be to seek correction from the ship's officers. Because internal complaints are an important part of keeping a workplace safe, OSHA will give a broad construction to the Act's language to ensure that internal complaints are protected as fully as possible.

The statute first prohibits retaliation because "the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred." 46 U.S.C. 2114(a)(1)(A). One way an employer will know that a seaman "is about to report" the violation is when the seaman has made an internal complaint and there are circumstances from which a reasonable person would understand that the seaman will likely report the violation to an agency if the violation is not cured. These circumstances might arise from the internal report itself (*e.g.,* "I will contact the authorities if it is not fixed"), the seaman's history of reporting similar violations to authorities, or other similar considerations. Further, given that a seaman may be at sea for extended periods without access to ways of reporting a violation, a significant time may elapse between the time the employer learns of the seaman's intent to report and the time the report can actually be made. OSHA will read the phrase "about to report" broadly to protect the seaman in such a circumstance. Furthermore, since one of the main purposes of SPA is to promote the provision of accurate information to government agencies about unsafe conditions on vessels, OSHA will also read this phrase to protect a seaman's refusing to lie to an agency about unsafe vessel conditions or protesting being forced to tell such lies. *Cf. Donovan on Behalf of Anderson* v. *Stafford Const. Co.,* 732 F.2d 954, 959–60 (D.C. Cir. 1984) (employee's telling company officials that she would not lie to Mine Safety and Health Administration investigators is activity protected by anti-retaliation provision of Federal Mine Safety and Health Act).

The Act also protects the seaman against discrimination when "the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public." 46 U.S.C. 2114(a)(1)(B). To qualify for this protection, the seaman "must have sought from the employer, and been unable to obtain, correction of the unsafe condition." 46 U.S.C. 2114(a)(3). Although not stated explicitly, in the Secretary's view, the reasonable implication of the statutory language is that the seaman's preliminary act of seeking correction of the condition is itself protected activity. That is, a seaman who asks his or her employer to correct a condition he or she reasonably believes would result in serious injury and suffers retaliation because of that request before the occasion to refuse to perform the unsafe work arises is protected by the Act. Although the literal terms of the Act could be read to leave the request for correction required yet unprotected, courts reject "absurd result[s]." *Stone* v. *Instrumentation Laboratory Co.,* 591 F.3d 239, 243 (4th Cir. 2009) ("Courts will not . . . adopt a 'literal' construction of a statute if such interpretation would thwart the statute's obvious purpose or lead to an 'absurd result.' " [quoting *Chesapeake Ranch Water Co.* v. *Board of Comm'rs of Calvert County,* 401 F.3d 274, 280 (4th Cir. 2005)]). The Agency's interpretation is embodied in the last sentence of section 1986.102(c): "Any seaman who requests such a correction shall be protected against retaliation because of the request."

The Chamber of Shipping of America submitted a comment generally supportive of the right to refuse unsafe work recognized by section 1986.102(c)(2). Every employee, the Chamber agreed, "has not only a right but a responsibility to report unsafe working conditions to their supervisor in order that these concerns can be addressed before work begins." It said that its members have enacted policies which recognize that "every mariner on board a ship "is a part of the workplace safety team," and Chamber members "agree that the best protection against future claims of retaliation is the creation of a reporting process for employees to use when the have safety concerns which necessarily must include actions taken by senior officers on board as well as shore management in response to those concerns." Docket ID OSHA–2011–0841–0004.

However, while supporting a seaman's the right to refuse unsafe work (once correction has been sought) in the context of normal operating conditions of the vessel, the Chamber argued that there should be no such protection in emergency conditions. For example, the Chamber noted, heavy weather, a sea rescue, or a shipboard emergency, such as fire, may jeopardize the ship and all who are aboard her, and in these situations actions may be necessary that would "give any reasonable individual a reasonable apprehension of injury even in light of the advanced training skills possessed by mariners." In these situations "it is absolutely critical that senior officers managing the emergency be able to issue orders to mariners and expect them to be followed in order to execute the necessary and timely response." Thus, the Chamber suggested amending section 1986.102(c)(2) as follows (additions italicized):

> Refused to perform duties *associated with the normal operation of the vessel,* ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public. *Prohibited acts do not include duties ordered by the seaman's employer deemed necessary to protect the lives of the crew in emergency situations.*

Docket ID OSHA–2011–0841–0004.

OSHA recognizes that a ship-owner and its agents must be able to respond effectively to an emergency that threatens the ship and those aboard her. However, OSHA has decided against amending the regulation as suggested by the Chamber. The work refusal provision in the regulation is taken directly from the statute (sec. 2114(a)(1)(B)), and there is nothing in the statutory language that explicitly limits the refusal right in emergencies. Moreover, the language proposed by the Chamber could shift the balance struck by Congress between the employer and seaman by giving the employer the ability to chill refusals to work by interpreting "emergency situations" broadly. Such a result would be counter to the broad remedial purpose of the statute. Moreover, the record contains insufficient information from which to shape the contours of an appropriate rule, and the Secretary is unaware of any such cases that have arisen under the statute.

Nonetheless, there may be some situations in which it would be inappropriate to award relief to a seaman who had refused to engage in lifesaving activities in an emergency situation. It would be problematic to interpret the statutory work refusal provision in sec. 2114(a)(1)(B)—which is aimed at the safety of seaman—in a way that might actually directly endanger them. However, the Secretary believes that these situations will be rare and are better decided on a case-by-case basis in the context of adjudication rather than through a categorical rule. Factors to be considered in such situations could include, but are not necessarily limited to, the nature of the emergency, the work ordered to be performed, the seaman's training and duties, and the opportunities that existed to do the work in a safer way.

SPA provides protection to certain other types of internal communications. It covers the situation where "the seaman notified, or attempted to notify, the vessel owner or the Secretary [of the department in which in Coast Guard is operating] of a work-related personal injury or work-related illness of a seaman." 46 U.S.C. 2114(a)(1)(D). As noted above, this covers oral, written and electronic communications to any agent of the vessel's owner. SPA also disallows retaliation because "the seaman accurately reported hours of duty under this part." 46 U.S.C. 2114(a)(1)(G). In keeping with the discussion above, this language too should be interpreted in favor of broad protection for seamen should a question of its meaning arise.

Finally, consistent with the broad interpretation of the statute as discussed above, OSHA believes that most reports required by the U.S. Coast Guard under 46 CFR parts 4.04 and 4.05 are protected by SPA.

Section 1986.103 Filing of Retaliation Complaints

This section describes the process for filing a complaint alleging retaliation in violation of SPA. The procedures described are consistent with those governing complaints under STAA as well as other whistleblower statutes OSHA administers.

Under paragraph (a), complaints may be filed by a seaman or, with the seaman's consent, by any person on the seaman's behalf. Paragraph (b) provides that complaints filed under SPA need not be in any particular form; they may be either oral or in writing. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. Paragraph (c) explains with whom in OSHA complaints may be filed.

Paragraph (d) addresses timeliness. To be timely, a complaint must be filed within 180 days of the occurrence of the alleged violation. Under Supreme Court precedent, a violation occurs when the retaliatory decision has been both "made and communicated to" the complainant. *Del. State College* v. *Ricks,* 449 U.S. 250, 258 (1980). In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *EEOC* v. *United Parcel Serv.,* 249 F.3d 557, 561–62 (6th Cir. 2001). A complaint will be considered filed on the date of postmark, facsimile transmittal, electronic communication transmittal, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office. The regulatory text indicates that filing deadlines may be tolled based on principles developed in applicable case law. *Donovan* v. *Hahner, Foreman & Harness, Inc.,* 736 F.2d 1421, 1423–29 (10th Cir. 1984).

Paragraph (e), which is consistent with provisions implementing other OSHA whistleblower programs, describes the relationship between section 11(c) complaints and SPA whistleblower complaints. Section 11(c) of the OSH Act, 29 U.S.C. 660(c), generally prohibits employers from retaliating against employees for filing safety or health complaints or otherwise initiating or participating in proceedings under the OSH Act. Some of the activity protected by SPA, including maritime safety complaints and work refusals, may also be covered under section 11(c), though the geographic limits of section 4(a) of the OSH Act, 29 U.S.C. 653(a), which are applicable to section 11(c), do not apply to SPA.[5] Paragraph (e) states that SPA whistleblower complaints that also allege facts constituting a section 11(c) violation will be deemed to have been filed under both statutes. Similarly, section 11(c) complaints that allege facts constituting a violation of SPA will also be deemed to have been filed under both laws. In these cases, normal procedures and timeliness requirements under the respective statutes and regulations will apply.

OSHA notes that a complaint of retaliation filed with OSHA under SPA is not a formal document and need not conform to the pleading standards for complaints filed in federal district court articulated in *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007) and *Ashcroft* v. *Iqbal,* 556 U.S. 662 (2009). *Sylvester* v. *Parexel Int'l, Inc.,* No. 07–123, 2011 WL 2165854, at *9–10 (ARB May 26, 2011) (holding whistleblower complaints filed with OSHA under analogous provisions in the Sarbanes-Oxley Act need not conform to federal court pleading standards). Rather, the complaint filed with OSHA under this section simply alerts the Agency to the existence of the alleged retaliation and the complainant's desire that the Agency investigate the complaint. Upon the filing of a complaint with OSHA, the Assistant Secretary is to determine whether "the complaint, supplemented as appropriate by interviews of the complainant" alleges "the existence of facts and evidence to make a prima facie showing." 29 CFR 1986.104(e). As explained in section 1986.104(e), if the complaint, supplemented as appropriate, contains a prima facie allegation, and the respondent does not show clear and convincing evidence that it would have taken the same action in the absence of the alleged protected activity, OSHA conducts an investigation to determine whether there is reasonable cause to believe that retaliation has occurred. *See* 49 U.S.C. 42121(b)(2), 29 CFR 1986.104(e).

Section 1986.104 Investigation

This section describes the procedures that apply to the investigation of complaints under SPA. Paragraph (a) of this section outlines the procedures for notifying the parties and the U.S. Coast Guard of the complaint and notifying the respondent of its rights under these regulations. Paragraph (b) describes the procedures for the respondent to submit its response to the complaint. Paragraph (c) explains that the Agency will share respondent's submissions with the complainant, with redactions in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws as necessary, and will permit the complainant to respond to those submissions. The Agency expects that sharing information with complainants will assist it in conducting full and fair investigations and thoroughly assessing defenses raised by respondents. Paragraph (d) of this section discusses the confidentiality of information provided during investigations.

Paragraph (e) sets forth the applicable burdens of proof. As discussed above, SPA adopts the relevant provisions of STAA, which in turn adopts the burdens of proof under AIR21. *Dady* v. *Harley Marine Services, Inc., Nos. 13–076, 13–077, 2015 WL 4674602, at *3 (ARB July 21, 2015), petition filed,* (11th Cir. Sept. 14. 2015) (No. 15–14110). A complainant must make an initial prima facie showing that protected activity was "a contributing factor" in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. *Ferguson* v. *New Prime, Inc.,* No. 10–75, 2011 WL 4343278, at *3 (ARB Aug. 31, 2011); *Clarke* v. *Navajo Express,* No. 09–114, 2011 WL 2614326, at *3 (ARB June 29, 2011). The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing. The complainant's burden may be satisfied, for example, if he or she shows that the adverse action took place shortly after protected activity, giving rise to the inference that it was a contributing factor in the adverse action.

If the complainant does not make the required prima facie showing, the investigation must be discontinued and the complaint dismissed. *Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the ERA, which is the same framework now found in STAA and therefore SPA, served a "gatekeeping function" that "stemm[ed] frivolous complaints"). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer demonstrates, by clear and convincing evidence, that it would have taken the same adverse action in the absence of the protected activity. Thus, OSHA must dismiss a complaint under SPA and not investigate (or cease investigating) if either: (1) The complainant fails to meet the prima facie showing that the protected activity was a contributing factor in the adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

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[5] SPA contains no geographic limit; its scope is limited only by the definition of "seaman."

Paragraph (f) describes the procedures the Assistant Secretary will follow prior to the issuance of findings and a preliminary order when the Assistant Secretary has reasonable cause to believe that a violation has occurred. Its purpose is to ensure compliance with the Due Process Clause of the Fifth Amendment, as interpreted by the Supreme Court in *Brock* v. *Roadway Express, Inc.,* 481 U.S. 252 (1987) (requiring OSHA to give a STAA respondent the opportunity to review the substance of the evidence and respond, prior to ordering preliminary reinstatement).

Section 1986.105 Issuance of Findings and Preliminary Orders

This section provides that, within 60 days of the filing of a complaint and on the basis of information obtained in the investigation, the Assistant Secretary will issue written findings regarding whether there is reasonable cause to believe that the complaint has merit. If the Assistant Secretary concludes that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate relief, including: A requirement that the person take affirmative action to abate the violation; reinstatement to the seaman's former position; compensatory damages, including back pay with interest and damages such as litigation fees and costs; and punitive damages up to $250,000, where appropriate. Affirmative action to abate the violation includes a variety of measures, such as posting notices about SPA orders and rights, as well as expungement of adverse comments in a personnel record. *Scott* v. *Roadway Express, Inc.,* No. 01–065, 2003 WL 21269144, at *1–2 (ARB May 29, 2003) (posting notices of STAA orders and rights); *Pollock* v. *Continental Express,* Nos. 07–073, 08–051, 2010 WL 1776974, at *9 (ARB Apr. 7, 2010) (expungement of adverse references).

The findings and, where appropriate, the preliminary order, advise the parties of their right to file objections to the findings and the preliminary order of the Assistant Secretary and to request a hearing. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final decision and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he or she received prior to his termination, but not actually return to work. *Smith* v. *Lake City Enterprises, Inc.,* Nos. 09–033, 08–091, 2010 WL 3910346, at *8 (ARB Sept. 24, 2010) (holding that an employer who violated STAA was to compensate the complainant with "front pay" when reinstatement was not possible). Such front pay or economic reinstatement is also employed in cases arising under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(2). *Sec'y of Labor ex rel. York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (ALJ June 26, 2001). Front pay has been recognized as a possible remedy in cases under the whistleblower statutes enforced by OSHA in circumstances where reinstatement would not be appropriate. *Hagman* v. *Washington Mutual Bank,* , ALJ No. 2005–SOX–73, 2006 WL 6105301, at *32 (Dec. 19, 2006) (noting that while reinstatement is the "preferred and presumptive remedy" under Sarbanes-Oxley, "[f]ront pay may be awarded as a substitute when reinstatement is inappropriate due to: (1) An employee's medical condition that is causally related to her employer's retaliatory action . . .; (2) manifest hostility between the parties . . .; (3) the fact that claimant's former position no longer exists . . .; or (4) the fact that employer is no longer in business at the time of the decision"); *Hobby* v. *Georgia Power Co.,* ARB No. 98–166, ALJ No. 1990–ERA–30 (ARB Feb. 9, 2001) (noting circumstances in which front pay may be available in lieu of reinstatement but ordering reinstatement); *Brown* v. *Lockheed Martin Corp.,* ALJ No. 2008–SOX–49, 2010 WL 2054426, at *55–56 (Jan. 15, 2010) (same). Congress intended that seamen be preliminarily reinstated to their positions if OSHA finds reasonable cause to believe that they were discharged in violation of SPA. When OSHA finds a violation, the norm is for OSHA to order immediate preliminary reinstatement. Neither an employer nor an employee has a statutory right to choose economic reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's satisfaction that reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the seaman. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the seaman continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating a seaman should the employer ultimately prevail in the whistleblower adjudication.

In ordering interest on back pay, the Secretary has determined that, instead of computing the interest due by compounding quarterly the Internal Revenue Service interest rate for the underpayment of taxes, which under 26 U.S.C. 6621 is generally the Federal short-term rate plus three percentage points, interest will be compounded daily. The Secretary believes that daily compounding of interest better achieves the make-whole purpose of a back pay award. Daily compounding of interest has become the norm in private lending and recently was found to be the most appropriate method of calculating interest on back pay by the National Labor Relations Board. *Jackson Hosp. Corp.* v. *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union,* 356 NLRB No. 8, 2010 WL 4318371, at *3–4 (2010). Additionally, interest on tax underpayments under the Internal Revenue Code, 26 U.S.C. 6621, is compounded daily pursuant to 26 U.S.C. 6622(a).

Subpart B—Litigation

Section 1986.106 Objections to the Findings and the Preliminary Order and Request for a Hearing

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections also is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record and the OSHA official who issued the findings, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* No. 04–101, 2005 WL 2865915, at *7 (ARB Oct. 31, 2005).

A respondent may file a motion to stay OSHA's preliminary order of reinstatement with the Office of

Administrative Law Judges. However, a stay will be granted only on the basis of exceptional circumstances. OSHA believes that a stay of the Assistant Secretary's preliminary order of reinstatement would be appropriate only where the respondent can establish the necessary criteria for a stay, *i.e.,* the respondent would suffer irreparable injury; the respondent is likely to succeed on the merits; a balancing of possible harms to the parties favors the respondent; and the public interest favors a stay.

Section 1986.107 Hearings

This section adopts the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 subpart A. This section provides that the hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo* on the record. If both the complainant and respondent object to the findings and/or preliminary order of the Assistant Secretary, an ALJ will conduct a single, consolidated hearing. This section states that ALJs have broad power to limit discovery in order to expedite the hearing. This furthers an important goal of SPA—to have unlawfully terminated seamen reinstated as quickly as possible.

This section explains that formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious. This is consistent with the Administrative Procedure Act, which provides at 5 U.S.C. 556(d): "Any oral or documentary evidence may be received, but the Agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. . . ." *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 705–06 (1948) (administrative agencies not restricted by rigid rules of evidence). Furthermore, it is inappropriate to apply the technical rules of evidence in part 18 because OSHA anticipates that complainants will often appear *pro se,* as is the case with other whistleblower statutes the Department of Labor administers. Also, hearsay evidence is often appropriate in whistleblower cases, as there often is no relevant evidence other than hearsay to prove discriminatory intent. ALJs have the responsibility to determine the appropriate weight to be given to such evidence. For these reasons the interests of determining all of the relevant facts are best served by not having strict evidentiary rules.

Section 1986.108 Role of Federal Agencies

Paragraph (a)(1) of this section explains that the Assistant Secretary, represented by an attorney from the appropriate Regional Solicitor's office, ordinarily will be the prosecuting party in cases in which the respondent objects to the findings or the preliminary reinstatement order. This has been the practice under STAA, from which the SPA's procedures are drawn, and the public interest generally requires the Assistant Secretary's participation in such matters. The case reports show that there has been relatively little litigation under SPA to date, and OSHA believes that relatively few private attorneys have developed adequate expertise in representing SPA whistleblower complainants.

Where the complainant, but not the respondent, objects to the findings or order, the regulations retain the Assistant Secretary's discretion to participate as a party or amicus curiae at any stage of the proceedings, including the right to petition for review of an ALJ decision.

Paragraph (a)(2) clarifies that if the Assistant Secretary assumes the role of prosecuting party in accordance with paragraph (a)(1), he or she may, upon written notice to the other parties, withdraw as the prosecuting party in the exercise of prosecutorial discretion. If the Assistant Secretary withdraws, the complainant will become the prosecuting party and the ALJ will issue appropriate orders to regulate the course of future proceedings.

Paragraph (a)(3) provides that copies of documents in all cases must be sent to all parties, or if represented by counsel, to them. If the Assistant Secretary is participating in the proceeding, copies of documents must be sent to the Regional Solicitor's office representing the Assistant Secretary.

Paragraph (b) states that the U.S. Coast Guard, if interested in a proceeding, also may participate as amicus curiae at any time in the proceeding. This paragraph also permits the U.S. Coast Guard to request copies of all documents, regardless of whether it is participating in the case.

Section 1986.109 Decisions and Orders of the Administrative Law Judge

This section sets forth in paragraph (a) the requirements for the content of the decision and order of the ALJ. Paragraphs (a) and (b) state the standards for finding a violation under SPA and for precluding such a finding.

Specifically, the complainant must show that the protected activity was a "contributing factor" in the adverse action alleged in the complaint. A contributing factor is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." *Clarke, supra,* at *3. The complainant (a term that, in this paragraph, refers to the Assistant Secretary if he or she is the prosecuting party) can succeed by providing either direct or indirect proof of contribution. Direct evidence is evidence that conclusively connects the protected activity and the adverse action and does not rely upon inference. If the complainant does not produce direct evidence, he or she must proceed indirectly, or inferentially, by proving by a preponderance of the evidence that an activity protected by SPA was the true reason for the adverse action. One type of indirect, also known as circumstantial, evidence is evidence that discredits the respondent's proffered reasons for the adverse action, demonstrating instead that they were pretext for retaliation. *Id.* Another type of circumstantial evidence is temporal proximity between the protected activity and the adverse action. *Ferguson, supra,* at *2. The respondent may avoid liability if it "demonstrates by clear and convincing evidence" that it would have taken the same adverse action in any event. Clear and convincing evidence is evidence indicating that the thing to be proved is highly probably or reasonably certain. *Clarke, supra,* at *3.

Paragraph (c) provides that the Assistant Secretary's determinations about when to proceed with an investigation and when to dismiss a complaint without an investigation or without a complete investigation are discretionary decisions not subject to review by the ALJ. The ALJ therefore may not remand cases to the Assistant Secretary to conduct an investigation or make further factual findings. If there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if warranted by the facts and circumstances.

Paragraph (d)(1) describes the remedies that the ALJ may order and provides that interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. (See the earlier discussion of section 1986.105.) In addition, paragraph (d)(2) in this section requires the ALJ to issue an order denying the complaint if he or she determines that the respondent has not violated SPA.

The Chamber of Shipping of America requested that section 1986.109 and .110 be amended to allow awards to employers of attorney fees and litigation costs against claimants found to have made frivolous or fraudulent claims. Docket ID OSHA–2011–0841–0004. The Secretary declines to do so. Under the American Rule, generally parties must bear their own costs of litigation unless expressly authorized by Congress. *Key Tronic* v. *United States,* 511 U.S. 809, 814 (1994); *Aleyeska Pipeline Service Co.* v. *Wilderness Society,* 421 U.S. 240, 247 (1975); *Unbelievable, Inc.* v. *NLRB,* 118 F.3d 795, 805 (D.C. Cir. 1997) (holding that the NLRB does not have the authority to depart from the American Rule to award attorney's fees incurred because of the assertion of frivolous defenses). There is no such expression of intent here: There is no language in either SPA or STAA entitling respondents to recover attorney's fees. Indeed STAA, which is incorporated by SPA, expressly allows successful claimants to recover attorney's fees; the statute's failure to make a similar provision for employers only serves to underscore the fact that Congress did not intend to award them. Similarly, other whistleblower statues that OSHA administers do allow respondents to recover for frivolous or bad faith claims. *See, e.g.,* 6 U.S.C. 1142(c)(3)(D); 15 U.S.C. 2087(b)(3)(C); 49 U.S.C. 42121(b)(3)(C). This also cuts against the idea that Congress intended them here. The Secretary may only award those remedies Congress has actually empowered him to award. *Filiberti* v. *Merit Sys. Prot. Bd.,* 804 F.2d 1504, 1511–12 (9th Cir. 1986) (citing *Civil Aeronautics Board* v. *Delta Air Lines, Inc.,* 367 U.S. 316, 322 (1961)). Finally, the point of SPA is to provide assurance to seamen that they are free to report safety concerns. The addition of a potential sanction for filing a claim under the Act has the potential to undercut that goal. Thus, OSHA rejects the Chamber's suggestion here.

Paragraph (e) requires that the ALJ's decision be served on all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor. Paragraph (e) also provides that any ALJ decision requiring reinstatement or lifting a preliminary order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the ARB.

Section 1986.110 Decisions and Orders of the Administrative Review Board

Paragraph (a) sets forth rules regarding seeking review of an ALJ's decision with the ARB. Upon the issuance of the ALJ's decision, the parties have 14 days within which to petition the ARB for review of that decision. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing of the petition; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. In addition to being sent to the ARB, the petition is to be served on all parties, the Chief Administrative Law Judge, the Assistant Secretary, and, in cases in which the Assistant Secretary is a party, the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor. Consistent with the procedures for petitions for review under other OSHA-administered whistleblower laws, paragraph (b) of this section indicates that the ARB has discretion to accept or reject review in SPA whistleblower cases. Congress intended these whistleblower cases to be expedited, as reflected by the provision in STAA, which applies to SPA, providing for a hearing *de novo* in district court if the Secretary has not issued a final decision within 210 days of the filing of the complaint. Making review of SPA whistleblower cases discretionary may assist in furthering that goal. As noted in paragraph (a) of this section, the parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary.

When the ARB accepts a petition for review, the ARB will review the ALJ's factual determinations under the substantial evidence standard. If a timely petition for review is filed with the ARB, any relief ordered by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. In exceptional circumstances, however, the ARB may grant a motion to stay an ALJ's order of reinstatement. A stay of a preliminary order of reinstatement is appropriate only where the respondent can establish the necessary criteria for a stay, *i.e.,* the respondent will suffer irreparable injury; the respondent is likely to succeed on the merits; a balancing of possible harms to the parties favors the respondent; and the public interest favors a stay.

Paragraph (c) incorporates the statutory requirement that the Secretary's final decision be issued within 120 days of the conclusion of the hearing. The hearing is deemed concluded 14 days after the date of the ALJ's decision unless a motion for reconsideration has been filed with the ALJ, in which case the hearing is concluded on the date the motion for reconsideration is ruled upon or 14 days after a new ALJ decision is issued. This paragraph further provides for the ARB's decision in all cases to be served on all parties, the Chief Administrative Law Judge, the Assistant Secretary, and the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

Paragraph (d) describes the remedies the ARB can award if it concludes that the respondent has violated SPA. (*See* the earlier discussion of remedies at section 1986.105 and .109.) Under paragraph (e), if the ARB determines that the respondent has not violated the law, it will issue an order denying the complaint.

Subpart C—Miscellaneous Provisions

Section 1986.111 Withdrawal of SPA Complaints, Findings, Objections, and Petitions for Review; Settlement

This section provides procedures and time periods for the withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, and the withdrawal of objections to findings and/or orders. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Paragraph (a) permits a complainant to withdraw, orally or in writing, his or her complaint to the Assistant Secretary at any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order. The Assistant Secretary will confirm in writing the complainant's desire to withdraw and will determine whether to approve the withdrawal. If approved, the Assistant Secretary will notify all parties if the withdrawal is approved. Complaints that are withdrawn pursuant to settlement agreements prior to the filing of objections must be approved in accordance with the settlement approval procedures in paragraph (d). The complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

Under paragraph (b), the Assistant Secretary may withdraw his or her findings and/or preliminary order at any time before the expiration of the 30-day objection period described in section 1986.106, if no objection has yet been filed. The Assistant Secretary may substitute new findings and/or a preliminary order, and the date of receipt of the substituted findings and/or order will begin a new 30-day objection period.

Paragraph (c) addresses situations in which parties seek to withdraw either objections to the Assistant Secretary's findings and/or preliminary order or petitions for review of ALJ decisions. A party may withdraw its objections to the Assistant Secretary's findings and/or preliminary order at any time before the findings and/or preliminary order become final by filing a written withdrawal with the ALJ. Similarly, if a case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, depending on where the case is pending, will determine whether to approve the withdrawal of the objections or the petition for review. Paragraph (c) clarifies that if the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or preliminary order, and there are no other pending objections, the Assistant Secretary's findings and/or preliminary order will become the final order of the Secretary. Likewise, if the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. Finally, paragraph (c) provides that if objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d).

Paragraph (d)(1) states that a case may be settled at the investigative stage if the Assistant Secretary, the complainant, and the respondent agree. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates his or her consent and achieves the consent of all three parties. Paragraph (d)(2) permits a case to be settled if the participating parties agree and the ALJ before whom the case is pending approves at any time after the filing of objections to the Assistant Secretary's findings and/or preliminary order. Similarly, if the case is before the ARB, the ARB may approve a settlement between the participating parties.

Under paragraph (e), settlements approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced pursuant to 49 U.S.C. 31105(e), as incorporated by 46 U.S.C. 2114(b).

Section 1986.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary. Paragraph (a) provides that within 60 days of the issuance of a final order under sections 1986.109 or 1986.110, a person adversely affected or aggrieved by such order may file a petition for review of the order in the court of appeals of the United States for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. Paragraph (b) states that a final order will not be subject to judicial review in any criminal or other civil proceeding. Paragraph (c) requires that in cases where judicial review is sought the ARB or ALJ, as the case may be, must submit the record of proceedings to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

Section 1986.113 Judicial Enforcement

This section provides that the Secretary may obtain judicial enforcement of orders, including orders approving settlement agreements, by filing a civil action seeking such enforcement in the United States district court for the district in which the violation occurred.

Section 1986.114 District Court Jurisdiction of Retaliation Complaints Under SPA

This section allows a complainant to bring an action in district court for *de novo* review of the allegations contained in the complaint filed with OSHA if there has been no final decision of the Secretary and 210 days have passed since the filing of that complaint and the delay was not due to the complainant's bad faith. This section reflects the Secretary's position that it would not be reasonable to construe the statute to permit a complainant to initiate an action in federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the administrative complaint. In the Secretary's view, the purpose of the "kick out" provision is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals.

Paragraph (b) of this section requires a complainant to provide a file-stamped copy of his or her complaint within seven days after filing a complaint in district court to the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending. A copy of the complaint also must be provided to the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor. This provision is necessary to notify the Agency that the complainant has opted to file a complaint in district court. This provision is not a substitute for the complainant's compliance with the requirements for service of process of the district court complaint contained in the Federal Rules of Civil Procedure and the local rules of the district court where the complaint is filed.

Section 1986.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and three-day's notice to the parties, waive any rule or issue such orders as justice or the administration of SPA's whistleblower provision requires.

V. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, Section 1986.103) which was previously reviewed and approved for use by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The assigned OMB control number is 1218–0236.

VI. Administrative Procedure Act

The notice and comment rulemaking procedures of 5 U.S.C.553, a provision of the Administrative Procedure Act (APA), do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). Part 1986 sets forth interpretive rules and rules of agency procedure and practice within the meaning of that section. Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments was not required. Although Part 1986 was not subject to the notice and comment procedures of the APA, the Assistant Secretary sought and considered comments to enable the agency to improve the rules by taking into account the concerns of interested persons.

Furthermore, because this rule is procedural and interpretative rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this final rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases. Furthermore, most of the provisions of this rule were in the IFR and have already been in effect since February 6, 2013.

VII. Executive Orders 12866 and 13563; Unfunded Mandates Reform Act of 1995; Executive Order 13132

The Department has concluded that this rule is not a "significant regulatory action" within the meaning of section 3(f)(4) of Executive Order 12866, as reaffirmed by Executive Order 13563, because it is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared. Because no notice of proposed rulemaking was published, no statement is required under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532. In any event, this rulemaking is procedural and interpretive in nature and is thus not expected to have a significant economic impact. Finally, this rule does not have "federalism implications." The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" and therefore is not subject to Executive Order 13132 (Federalism).

VIII. Regulatory Flexibility Analysis

The notice and comment rulemaking procedures of section 553 of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). Rules that are exempt from APA notice and comment requirements are also exempt from the Regulatory Flexibility Act (RFA). *See* SBA Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, at 9; also found at: *https://www.sba.gov/advocacy/guide-government-agencies-how-comply-regulatory-flexibility-act.* This is a rule of agency procedure, practice, and interpretation within the meaning of 5 U.S.C. 553; and, therefore, the rule is exempt from both the notice and comment rulemaking procedures of the APA and the requirements under the RFA.

List of Subjects in 29 CFR Part 1986

Administrative practice and procedure, Employment, Investigations, Marine safety, Reporting and recordkeeping requirements, Safety, Seamen, Transportation, Whistleblowing.

Authority and Signature

This document was prepared under the direction and control of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC, on September 1, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble, 29 CFR part 1986 is revised to read as follows:

PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SEAMAN'S PROTECTION ACT (SPA), AS AMENDED

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

1986.100 Purpose and scope.
1986.101 Definitions.
1986.102 Obligations and prohibited acts.
1986.103 Filing of retaliation complaints.
1986.104 Investigation.
1986.105 Issuance of findings and preliminary orders.

Subpart B—Litigation

1986.106 Objections to the findings and the preliminary order and request for a hearing.
1986.107 Hearings.
1986.108 Role of Federal agencies.
1986.109 Decisions and orders of the administrative law judge.
1986.110 Decisions and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

1986.111 Withdrawal of SPA complaints, findings, objections, and petitions for review; settlement.
1986.112 Judicial review.
1986.113 Judicial enforcement.
1986.114 District court jurisdiction of retaliation complaints under SPA.
1986.115 Special circumstances; waiver of rules.

Authority: 46 U.S.C. 2114; 49 U.S.C. 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary of Labor's Order No. 2–2012 (Oct. 19, 2012), 77 FR 69378 (Nov. 16, 2012).

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

§ 1986.100 Purpose and scope.

(a) This part sets forth the procedures for, and interpretations of, the Seaman's Protection Act (SPA), 46 U.S.C. 2114, as amended, which protects a seaman from retaliation because the seaman has engaged in protected activity pertaining to compliance with maritime safety laws and accompanying regulations. SPA incorporates the procedures, requirements, and rights described in the whistleblower provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C. 31105.

(b) This part establishes procedures pursuant to the statutory provisions set forth above for the expeditious handling of retaliation complaints filed by seamen or persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings, litigation before administrative law judges (ALJs), post-hearing administrative review, withdrawals and settlements, and judicial review and enforcement. In addition, the rules in this part provide the Secretary's interpretations on certain statutory issues.

§ 1986.101 Definitions.

As used in this part:

(a) *Act* means the Seaman's Protection Act (SPA), 46 U.S.C. 2114, as amended.

(b) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(c) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(d) *Citizen of the United States* means an individual who is a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(22)); a corporation incorporated under the laws of the United States or a State; a corporation, partnership, association, or other business entity if the controlling interest is owned by citizens of the United States or whose principal place of business or base of operations is in a State; or a governmental entity of the Federal Government of the United States, of a State, or of a political subdivision of a State. The controlling interest in a corporation is owned by citizens of the United States if a majority of the stockholders are citizens of the United States.

(e) *Complainant* means the seaman who filed a SPA whistleblower complaint or on whose behalf a complaint was filed.

(f) *Cooperated* means any assistance or participation with an investigation, at any stage of the investigation, and regardless of the outcome of the investigation.

(g) *Maritime safety law or regulation* includes any statute or regulation regarding health or safety that applies to any person or equipment on a vessel.

(h) *Notify* or *notified* includes any oral or written communications.

(i) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(j) *Person* means one or more individuals or other entities, including but not limited to corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

(k) *Report* or *reported* means any oral or written communications.

(l) *Respondent* means the person alleged to have violated 46 U.S.C. 2114.

(m) *Seaman* means any individual engaged or employed in any capacity on board a U.S.-flag vessel or any other vessel owned by a citizen of the United States, except members of the Armed Forces. The term includes an individual formerly performing the work described above or an applicant for such work.

(n) *Secretary* means the Secretary of Labor or persons to whom authority under the Act has been delegated.

(o) *State* means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(p) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(q) *Vessel owner* includes all of the agents of the owner, including the vessel's master.

(r) Any future amendments to SPA that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1986.102 Obligations and prohibited acts.

(a) A person may not retaliate against any seaman because the seaman:

(1) In good faith reported or was about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believed that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred;

(2) Refused to perform duties ordered by the seaman's employer because the seaman had a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public;

(3) Testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;

(4) Notified, or attempted to notify, the vessel owner or the Secretary of the department in which the Coast Guard was operating of a work-related personal injury or work-related illness of a seaman;

(5) Cooperated with a safety investigation by the Secretary of the department in which the Coast Guard was operating or the National Transportation Safety Board;

(6) Furnished information to the Secretary of the department in which the Coast Guard was operating, the National Transportation Safety Board, or any other public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; or

(7) Accurately reported hours of duty under part A of subtitle II of title 46 of the United States Code.

(b) Retaliation means any discrimination against a seaman including, but not limited to, discharging, demoting, suspending, harassing, intimidating, threatening, restraining, coercing, blacklisting, or disciplining a seaman.

(c) For purposes of paragraph (a)(2) of this section, the circumstances causing a seaman's apprehension of serious injury must be of such a nature that a reasonable person, under similar circumstances, would conclude that there was a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer. To qualify for protection based on activity described in paragraph (a)(2) of this section, the seaman must have sought from the employer, and been unable to obtain, correction of the unsafe condition. Any seaman who requested such a correction shall be protected against retaliation because of the request.

§ 1986.103 Filing of retaliation complaints.

(a) *Who may file.* A seaman who believes that he or she has been retaliated against by a person in violation of SPA may file, or have filed by any person on the seaman's behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If a seaman is unable to file a complaint in English, OSHA will accept the complaint in any other language.

(c) *Place of filing.* The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the seaman resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov*

(d) *Time for filing.* Not later than 180 days after an alleged violation occurs, a seaman who believes that he or she has been retaliated against in violation of SPA may file, or have filed by any person on his or her behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, electronic communication transmittal, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

(e) *Relationship to section 11(c) complaints.* A complaint filed under SPA alleging facts that would also constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be a complaint under both SPA and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would also constitute a violation of SPA will be deemed to be a complaint filed under both SPA and section 11(c). Normal procedures and timeliness requirements under the respective statutes and regulations will be followed.

§ 1986.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint by providing the respondent with a copy of the complaint, redacted in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The Assistant Secretary will also notify the respondent of the respondent's rights under paragraphs (b) and (f) of this section. The Assistant Secretary will provide a copy of the unredacted complaint to the complainant (or complainant's legal counsel, if complainant is represented by counsel) and to the U.S. Coast Guard.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with the Assistant Secretary to present its position.

(c) Throughout the investigation, the Agency will provide to the complainant (or the complainant's legal counsel if complainant is represented by counsel) a copy of all of respondent's submissions to the Agency that are responsive to the complainant's whistleblower complaint. Before providing such materials to the complainant, the Agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The Agency will also provide the complainant with an opportunity to respond to such submissions.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e)(1) A complaint will be dismissed unless the complainant has made a prima facie showing that protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The seaman engaged in a protected activity;

(ii) The respondent knew or suspected that the seaman engaged in the protected activity;

(iii) The seaman suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the seaman engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complainant shows that the adverse action took place shortly after the protected activity, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint will not be conducted or will be discontinued if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in paragraph (e)(4) of this section, the Assistant Secretary will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1986.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the respondent (or the respondent's legal counsel, if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The complainant will also receive a copy of the materials that must be provided to the respondent under this paragraph. Before providing such materials to the complainant, the Agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The respondent will be given the opportunity to submit a written response, to meet with the investigators, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent must present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon thereafter as the Assistant Secretary and the respondent can agree, if the interests of justice so require.

§ 1986.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether there is reasonable cause to believe that the respondent retaliated against the complainant in violation of SPA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, the Assistant Secretary will accompany the findings with a preliminary order providing relief. Such order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, with the same compensation, terms, conditions and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees which the complainant has incurred). Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The preliminary order may also require the respondent to pay punitive damages of up to $250,000.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and, where appropriate, the preliminary order will be sent by certified mail, return receipt requested, to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or the order and to request a hearing. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and the preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and request for a hearing have been timely filed as provided at § 1986.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and/or the order.

Subpart B—Litigation

§ 1986.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1986.105(c). The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, and copies of the objections must be mailed at the same time to the other parties of record, and the OSHA official who issued the findings.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only on the basis of exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or preliminary order will become the final decision of the Secretary, not subject to judicial review.

§ 1986.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A of part 18 of this title.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo* on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated, and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1986.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding. In any case in which the respondent objects to the findings or the preliminary order, the Assistant Secretary ordinarily will be the prosecuting party. In any other cases, at the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or participate as amicus curiae at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) If the Assistant Secretary assumes the role of prosecuting party in accordance with paragraph (a)(1) of this section, he or she may, upon written notice to the ALJ or the Administrative Review Board (ARB), as the case may be, and the other parties, withdraw as the prosecuting party in the exercise of prosecutorial discretion. If the Assistant Secretary withdraws, the complainant will become the prosecuting party and the ALJ or the ARB, as the case may be, will issue appropriate orders to regulate the course of future proceedings.

(3) Copies of documents in all cases shall be sent to all parties, or if they are represented by counsel, to the latter. In cases in which the Assistant Secretary is a party, copies of the documents shall be sent to the Regional Solicitor's Office representing the Assistant Secretary.

(b) The U.S. Coast Guard, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at its discretion. At the request of the U.S. Coast Guard, copies of all documents in a case must be sent to that agency, whether or not that agency is participating in the proceeding.

§ 1986.109 Decisions and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant or the Assistant Secretary has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

(c) Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1986.104(e) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the ALJ will issue an order that will require, where appropriate: affirmative action to abate the violation, reinstatement of the complainant to his or her former position, with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees which the complainant may have incurred); and payment of punitive damages up to $250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the ARB, U.S. Department of Labor. The ALJ decision will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the decision for review.

§ 1986.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB, which has been delegated the authority to act for the Secretary and issue final decisions under this part. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that any order of reinstatement will be effective while review is conducted by the ARB unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision also will be served on the Assistant Secretary and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue a final order providing relief to the complainant. The final order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to $250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint.

Subpart C—Miscellaneous Provisions

§ 1986.111 Withdrawal of SPA complaints, findings, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by notifying the Assistant Secretary, orally or in writing, of his or her withdrawal. The Assistant Secretary then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. The Assistant Secretary will notify the parties (and each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw the findings and/or a preliminary order at any time before the expiration of the 30-day objection period described in § 1986.106, provided that no objection has been filed yet, and substitute new findings and/or a new preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or preliminary order become final, a party may withdraw objections to the Assistant Secretary's findings and/or preliminary order by filing a written withdrawal with the ALJ. If a case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a SPA complaint and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant, and the respondent agree to a settlement. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates the Assistant Secretary's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ or by the ARB, if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB as the case may be.

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in a United States district court pursuant to 49 U.S.C. 31105(e), as incorporated by 46 U.S.C. 2114(b).

§ 1986.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1986.109 and 1986.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the court of appeals of the United States for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB, or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1986.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order, including one approving a settlement agreement issued under SPA, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1986.114 District court jurisdiction of retaliation complaints under SPA.

(a) If there is no final order of the Secretary, 210 days have passed since the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. The action shall, at the request of either party to such action, be tried by the court with a jury.

(b) Within seven days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

§ 1986.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of the rules in this part, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders as justice or the administration of SPA requires.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in October 2016 and interest assumptions under the asset allocation regulation for valuation dates in the fourth quarter of 2016. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy (*Murphy.Deborah@PBGC.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4400 ext. 3451. (TTY/TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400 ext. 3451.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC's Web site (*http://www.pbgc.gov*).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for October 2016 and updates the asset allocation interest assumptions for the fourth quarter (October through December) of 2016.

The fourth quarter 2016 interest assumptions under the allocation regulation will be 1.98 percent for the first 20 years following the valuation date and 2.67 percent thereafter. In comparison with the interest assumptions in effect for the third quarter of 2016, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.52 percent in the select rate, and a decrease of 0.18 percent in the ultimate rate (the final rate).

The October 2016 interest assumptions under the benefit payments regulation will be 0.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for September 2016, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during October 2016, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 276, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
276	10–1–16	11–1–16	0.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 276, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
276	10–1–16	11–1–16	0.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for October–December 2016, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t =$	i_t	for $t =$	i_t	for $t =$
* * * * * * *						
October–December 2016	0.0198	1–20	0.0267	>20	N/A	N/A

Issued in Washington, DC, by

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2016–22172 Filed 9–14–16; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0757]

RIN 1625–AA08

Special Local Regulation; Atchafalaya River, Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for all navigable waters, near mile marker 4.5 of the Morgan City Port Allen route to extend north and south 1000 feet of Russo's boat launch on the Atchafalaya River. The special local regulation is necessary to protect participants and spectators from the hazards associated with the Battle of the Basin power boat race. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City or a designated representative.

DATES: This rule is effective from 10 a.m. on September 24, 2016 through 7 p.m. September 25, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0757 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact LTJG Vanessa Taylor, Marine Safety Unit Morgan City, U.S. Coast Guard; telephone 985–380–5334, email *Vanessa.R.Taylor@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
MM Mile Marker

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the request until July 25, 2016. Completing the NPRM process would delay the immediate action needed to protect spectators and vessels from hazards associated with the boat races. It is impracticable to publish an NPRM because we must establish this special local regulation by September 24, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice for this occurrence would unnecessarily delay the effective date and would be impracticable based on the limited time frame, as well as be contrary to public interest because immediate action is needed to protect spectators from the potential safety hazards associated with the high speed boat races.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Morgan City (COTP) has determined that potential hazards associated with the combination of recreational and commercial vessels and a high speed boat racing event starting at 10 a.m. and lasting until 7 p.m. on September 24, 2016 and September 25, 2016 is a safety concern for anyone within this area. This rule is needed to help ensure the safety of persons and recreational boats during the event on the navigable waters within the special local regulation.

IV. Discussion of the Rule

This rule establishes a special local regulation that will be enforced from 10 a.m. until 7 p.m. on September 24, 2016 and September 25, 2016. The special local regulation will cover all navigable waters near mile marker 4.5 on the Morgan City Port Allen alternate route extending 1000 feet north and south from Russo's boat launch in Morgan City. The duration of the zone is intended to protect spectators, vessels, and the marine environment in these navigable waters while the speed races occur. No vessel or person will be permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and specific times of enforcement for the special local regulation. The limited duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the high speed boat races are being conducted. This special local regulation will be relatively small and enforced over two days. Under certain conditions, moreover, vessels may still transit through the special local regulation when permitted by the COTP or a designated representative.

No vessel or person will be permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting less than 2 days that will prohibit entry into or transit through the speed boat race course located at mile marker 4.5 of the Morgan City Port Allen Alternate route in Morgan City, LA. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0757 to read as follows:

§ 165.T35–0757 Special local regulation; Atchafalaya River, Morgan City, LA.

(a) *Location.* The following area is a special local regulation: All waters of the Atchafalaya River near mile marker 4.5 of the Morgan City Port Allen route to extend north and south 1000 feet from Russo's boat launch.

(b) *Enforcement period.* This special local regulation will be enforced from 10 a.m. until 7 p.m. on September 24, 2016 and on September 25, 2016.

(c) *Regulations.* (1) In accordance with the general regulations of this part, entry into this zone is prohibited unless specifically authorized by the COTP or designated personnel. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 13 and 16 or phone at 985–380–5373.

(2) Persons and vessels permitted to deviate from this special local regulation and enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Informational broadcasts.* The COTP Morgan City or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the dates and times of enforcement.

Dated: September 6, 2016.

J.H. Miller,

Commander, U.S. Coast Guard, Acting Captain of the Port, Morgan City, Louisiana.

[FR Doc. 2016–22200 Filed 9–14–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0791]

RIN 1625–AA00

Safety Zone; Navy UNDET, Apra Outer Harbor, GU

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 700-yard radius on the surface and 1400-yard radius underwater of the Navy underwater detonation operations in the waters of Apra Outer Harbor, Guam. The Coast Guard believes this safety zone regulation is necessary to protect all persons and vessel that would otherwise transit or be within the affected areas from possible safety hazards associated with underwater detonation operations. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Guam.

DATES: This rule is effective without actual notice from September 15, 2016 until September 16, 2016. For the purposes of enforcement, actual notice will be used from September 13, 2016, until September 15, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0791 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Kristina Gauthier, Sector Guam, U.S. Coast Guard; telephone (671) 355–4866, email *Kristina.M.Gauthier@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the operation to publish an NPRM. Thus, delaying the effective dates of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect vessels and waterway users from the hazards associated with this operation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Due to the late notice and inherent danger in underwater detonation exercises, delaying the effective period of this safety zone would be contrary to public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Guam has determined that potential hazards associated with the U.S. Navy training exercise, which include detonation of underwater explosives on September 13–16, 2016, will be a safety concern for anyone within a 700-yard radius on the surface and 1400-yard radius underwater of the operation. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the exercise. Mariners and divers approaching too close to such exercises could potentially expose themselves to flying debris or other hazardous conditions.

IV. Discussion of the Rule

The safety zone will cover all navigable waters within 700-yards on the surface and 1400-yards underwater of vessels and machinery being used by the Navy. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the underwater detonation exercise. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of waters in Apra Outer Harbor for 8 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting eight hours that will prohibit entry within 700-yards on the surface and 1400-yards underwater of vessels and machinery being used by Navy personnel. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—SAFETY ZONE; NAVY UNDET, APRA OUTER HARBOR, GU

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–0791 to read as follows:

§ 165. T14–0791 Safety Zone; Navy UNDET, Apra Outer Harbor, GU.

(a) *Location.* The following areas, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70–15), from the surface of the water to the ocean floor, are safety zones:

Apra Outer Harbor, Guam September 13–16, 2016. All surface waters bounded by a circle with a 700-yard radius and all underwater areas bounded by a circle with a 1,400 yard radius centered at 13 degrees 27 minutes 42 seconds North Latitude and 144 degrees 38 minutes 30 seconds East Longitude, (NAD 1983).

(b) *Enforcement period.* This section will be enforced from 8 a.m. through 4 p.m. daily from September 13, 2016 through September 16, 2016.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. No vessels may enter or transit safety zones and no persons in the water may enter or transit safety zone unless authorized by the COTP or a designated representative thereof.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce these temporary safety zones.

(e) *Waiver.* The COTP may waive any of the requirements of this section for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(f) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: August 17, 2016.

James B. Pruett,

Captain, U.S. Coast Guard, Captain of the Port, Guam.

[FR Doc. 2016–22228 Filed 9–14–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 106

[Docket No. USCG–2015–0086]

RIN 1625–AC23

Requirements for Vessels With Registry Endorsements or Foreign-Flagged Vessels That Perform Certain Aquaculture Support Operations

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations to implement Subsection 901(c) of the Coast Guard Authorization Act of 2010, which grants the Secretary of the U.S. Department of Transportation (DOT) the authority to issue a waiver allowing a documented vessel with only a registry endorsement or a foreign-flagged vessel to be used in certain aquaculture operations. Specifically, those operations include the treatment and/or protection of aquaculture fish from disease, parasitic infestation, or other threats to their health. The new part establishes the requirement for an owner or operator of a vessel that is issued a waiver allowing the vessel to conduct aquaculture support operations by the Secretary of DOT to notify the Coast Guard that the vessel owner or operator has been issued such a waiver. The part also establishes operational and geographic requirements for vessels that are issued such a waiver.

DATES: This final rule is effective October 17, 2016.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–0086. To view public comments or documents mentioned in this preamble as being available in the docket, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. David Belliveau, Fishing Vessels Division (CG–CVC–3), U.S. Coast Guard; telephone 202–372–1247, email *David.J.Belliveau@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

BLS	U.S. Bureau of Labor Statistics
CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
CGAA	Coast Guard Authorization Act of 2010
COD	Certificate of Documentation
DHS	U.S. Department of Homeland Security
DOT	U.S. Department of Transportation
E.O.	Executive Order
FR	Federal Register
MARAD	Maritime Administration
NAICS	North American Industry Classification System
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
Pub. L.	Public Law
RA	Regulatory Analysis
SNPRM	Supplemental notice of proposed rulemaking
U.S.C.	United States Code

II. Regulatory History

On July 30, 2015, we published a notice of proposed rulemaking (NPRM) entitled "Requirements for Vessels With Registry Endorsements or Foreign-Flagged Vessels That Perform Certain Aquaculture Support Operations" in the **Federal Register** (FR) (80 FR 45491). We received one submission with three comments on the proposed rule. No public meeting was requested and none was held.

III. Basis and Purpose

Under Title 46 of United States Code (U.S.C.) 12102(d)(1), the Secretary of the U.S. Department of Transportation (DOT) may issue an "Aquaculture Support Operations Waiver" to allow a documented vessel with only a registry endorsement or a foreign-flagged vessel to be used in operations that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if the Secretary finds, after publishing a notice in the **Federal Register**, that a suitable vessel of the United States is not available to perform those services.[1]

In this final rule, the Coast Guard is amending 46 CFR subchapter I—Cargo and Miscellaneous Vessels, by adding a new part 106 that establishes the requirement for an owner or operator of a vessel that is issued an Aquaculture Support Operations Waiver by the Maritime Administration (MARAD),[2] for the purpose of conducting certain aquaculture support operations, to notify the Coast Guard that such a waiver has been issued. This new part also establishes operational and geographic requirements for a vessel that is issued such a waiver.

IV. Background

On May 27, 2010, U.S. Customs and Border Protection (CBP) ruled that aquaculture activities constitute "engag[ing] in the fisheries," and is thus within the meaning of 46 U.S.C. 108, for which a vessel must possess a Certificate of Documentation (COD) endorsed pursuant to 46 U.S.C. 12113 (see CBP ruling HQ H105735).[3] Title 46 U.S.C. 12113 limits employment in the fisheries to a vessel issued a COD with a fishery endorsement. This effectively disqualifies any foreign-flagged vessel from carrying out these activities.

Section 901 of the Coast Guard Authorization Act of 2010 (CGAA) (Pub. L. 111–281) amended 46 U.S.C. 12102 by adding subsection (d). Pursuant to 46 U.S.C. 12102(d)(1), the Secretary of DOT may issue an Aquaculture Support Operations Waiver allowing a documented vessel with a registry endorsement or a foreign-flagged vessel to be used in operations that treat or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if the Secretary finds, after publishing a notice in the **Federal Register**, that a suitable vessel of the United States is not available that could perform those services.

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[1] These services are generally performed by "wellboats" (commonly understood as fishing and housing facility vessels) that pump fish out of their pens and into the vessels' fish holds. The fish hold is full of sea water and while the fish are inside the fish hold, a metered dose of de-lousing chemical is added to the fish hold. The water is then circulated vigorously to ensure complete mixing of the de-lousing agent. Upon completion of the treatment cycle, the fish are returned to their pens.

[2] On October 14, 2014, the Secretary of Transportation delegated the authority to administer paragraph 901(c)(1) of the CGAA to the Maritime Administrator, MARAD.

[3] This ruling is available online from CBP by going to *http://rulings.cbp.gov/,* entering "HQ H105735" in the "Search" box and clicking "Go".

This rule is necessary to implement the Coast Guard's rulemaking responsibility as prescribed by 901(c)(2) of the CGAA. In that paragraph, Congress directed the Secretary of the U.S. Department of Homeland Security (DHS), the department under which the Coast Guard operates, to promulgate regulations that are necessary and appropriate to implement subsection 901(c). It also authorizes the Secretary of DHS to "grant interim permits pending the issuance of such regulations upon receipt of applications containing the required information." Through this rule, we are establishing the requirement that an owner or operator of a vessel who is issued an Aquaculture Support Operations Waiver by MARAD for the purpose of conducting certain aquaculture support operations must notify the Coast Guard that such a waiver has been issued. This rule also establishes operational and geographic requirements for vessels that are issued such waivers.

V. Discussion of Comments and Changes

One commenter submitted three comments for our consideration. These comments are available for viewing in the public docket for this rulemaking, where indicated under **ADDRESSES**. Below, we summarize these comments and our responses to them.

A. The commenter states that instead of putting the notification burden on the owner/operator, the responsibility to notify the Coast Guard that an Aquaculture Support Operations Waiver has been issued for a particular vessel should rest with the DOT. The commenter states that having DOT notify the Coast Guard that DOT has issued an Aquaculture Support Operations Waiver is more efficient and practical than having the owner/operator notify the Coast Guard and that doing so would also reduce the risk of communication error or delay.

We do not agree. First, it is important to note that the statute does not require MARAD to notify the Coast Guard that it has issued an Aquaculture Support Operations Waiver for an otherwise unqualified vessel to conduct aquaculture support operations in U.S. waters. Second, while the Coast Guard may expect MARAD to provide notification to the Coast Guard that it has issued an Aquaculture Support Operations Waiver, we cannot control the timing of MARAD's notification to the Coast Guard.

It also benefits the owner/operator of a vessel to have full control over when to notify the Coast Guard that he or she has received an Aquaculture Support Operations Waiver because it facilitates faster notification and eliminates the potential for administrative delay. Accordingly, if an owner/operator wants to be sure that the Coast Guard is notified of his or her vessel's Aquaculture Support Operations Waiver before conducting aquaculture support operations in U.S. waters, it benefits the owner/operator to notify the Coast Guard because it removes the risk of administrative delay that could result in the Coast Guard not receiving notification before the vessel engages in aquaculture support operations.

Prompt notification is necessary to ensure that the Coast Guard does not expend resources unnecessarily by deploying assets to conduct a law enforcement boarding to determine the eligibility of a vessel with only a registry endorsement or a foreign-flagged vessel to engage in aquaculture support operations in U.S. waters.

As discussed earlier, CBP ruled that aquaculture support activities constitute engaging in the fisheries, for which a vessel must possess a COD with a fishery endorsement. This effectively disqualifies any U.S. vessel without a "fisheries" endorsement or any foreign-flagged vessel from carrying out these activities without an Aquaculture Support Operations Waiver issued by MARAD. The notification requirement, therefore, is necessary for the Coast Guard's maritime domain awareness which, in turn, will help streamline the Coast Guard's law enforcement activities.

Additionally, placing the notification requirement on the owner/operator (the waiver-applicant), is not unprecedented. The "Small Vessel Waiver Program" is a program administered by MARAD. Under that program, MARAD has the authority to grant waivers of the U.S. build requirements for foreign-built vessels to operate in the United States as commercial passenger vessels. Under the Small Vessel Waiver Program, at the time that MARAD issues a waiver to the applicant, MARAD informs the applicant of the need to notify the Coast Guard's National Vessel Documentation Center that a waiver has been issued which, in turn, makes the vessel eligible to receive a coastwise trade endorsement on the vessel's Certificate of Documentation. 46 CFR 388.6(a)(2) (MARAD requirement); 46 CFR 67.7 (Coast Guard COD requirement). Placing the responsibility for notifying the Coast Guard that an owner/operator has received a waiver from MARAD to engage in aquaculture support operations is consistent with the notification responsibility provided under an existing, similarly administered MARAD program.

B. The commenter next states that the requirement to limit the vessel's aquaculture support operations to the geographic area identified in DOT's Aquaculture Support Operations Waiver lacks rationale and imposes a restriction not contemplated in the statute. We agree that the statute does not impose any restrictions regarding the geographic area within which a vessel may conduct aquaculture support operations. However, a vessel's geographic operational area is a factor in MARAD's analysis of whether there are any U.S. vessels available to perform those operations. Therefore, the requirement to conduct aquaculture support operations within the geographic area identified in MARAD's Aquaculture Support Operations Waiver, serves to uphold the terms of the waiver, which is issued, in large part, based upon the representations (including operational geographic representations[4]) of the owner/operator.

In the interest of providing flexibility consistent with the statute and the geographical limits of the Aquaculture Support Operations Waiver, however, the Coast Guard will accept waivers for operations in multiple locations. Accordingly, if an owner/operator anticipates that the vessel's aquaculture support operations will occur in several geographic locations, then the owner/operator can list those locations in its Aquaculture Support Operations Waiver application to MARAD to aid MARAD in its analysis of whether there are any suitable U.S.-flagged vessels available to conduct aquaculture support operations in those identified areas. The Coast Guard has revised § 106.120(a)(2) to reflect the possibility that a waiver may allow operations in more than one location. Because this change is a logical outgrowth of the NPRM, a supplemental notice of proposed rulemaking (SNPRM) is unnecessary. Further opportunity for public comment would only serve to delay completion of this rulemaking. Thus, we find good cause under 5 U.S.C. 553(b)(B) to proceed with publication of this final rule without an SNPRM.

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[4] Since 2010, in every application for an interim permit that the Coast Guard has received [eight as of November 2015], the applicant has identified, in general terms, the geographic area in which the vessel would be conducting aquaculture support operations. This same geographic area of operations information was, in turn, also provided to MARAD for the purpose of aiding MARAD in its U.S. vessel availability analysis.

C. Lastly, the commenter inquires whether the regulations in this rulemaking represent the completion of the Coast Guard's rulemaking obligations under subsection 901(c) of the CGAA. At this time, the Coast Guard does not expect to engage in further rulemaking to implement subsection 901(c).However, as prescribed in paragraph 901(c)(1), the Secretary of DOT was provided the discretionary authority to issue waivers allowing documented vessels with registry endorsements or foreign-flagged vessels to be used in aquaculture support operations when suitable vessels of the United States are not available that could perform those services. As noted above, on October 14, 2014, the Secretary of DOT delegated the authority to administer paragraph 901(c)(1) of the CGAA to the Maritime Administrator. Accordingly, we defer to MARAD on the process associated with the application for, and the issuance of, an Aquaculture Support Operations Waiver.

D. After publication of the NPRM, we determined that the wording of the "Penalties" section of the proposed regulation, § 106.125, raised an unintended ambiguity by providing that a vessel owner, operator, or charterer not operating a vessel as required in this part is subject to penalty under 46 U.S.C. 12151. We believe this wording may be incorrectly interpreted to mean that there can only be a violation if the vessel is not operating. We are, therefore, making a minor change to § 106.125 in this final rule to remove that unintended ambiguity by amending the section to provide that violation of this part is subject to the civil penalties set forth under 46 U.S.C. 12151. In addition to removing the unintended ambiguity, this wording is consistent with 46 U.S.C. 12151 and is also consistent with other Coast Guard regulations. See, for example, 46 CFR 4.06–70 and 46 CFR 16.115. Because this change is a logical outgrowth of the NPRM, an SNPRM is unnecessary. In addition, an SNPRM is unnecessary because the change is a non-substantive clarification. Further opportunity for public comment would only serve to delay completion of this rulemaking. Thus, we find good cause under 5 U.S.C. 553(b)(B) to proceed with publication of this final rule without an SNPRM.

Additionally, in light of the Secretary of Transportation's delegation to MARAD to administer the Aquaculture Support Operations Waiver program, we are changing the nomenclature from "DOT" to "MARAD" in § 106.115 and § 106.120 to more accurately reflect the issuing authority for aquaculture waivers. Because this change is a logical outgrowth of the proposed rule, an SNPRM is unnecessary. For the same reasons discussed earlier, we find good cause under 5 U.S.C. 553(b)(B) to proceed with publication of this final rule without an SNPRM.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is not a significant regulatory action under subsection 3(f) of E.O. 12866 as supplemented by E.O. 13563. The Office of Management and Budget has not reviewed it under E.O. 12866. We developed an analysis of the costs and benefits of the rule to ascertain its probable impacts on industry. A final Regulatory Analysis (RA) follows.

This RA provides an evaluation of the economic impacts associated with this final rule. The table that follows provides a summary of the rule's costs and benefits.

TABLE 1—SUMMARY OF THE RULE'S IMPACTS

Category	Summary
Applicability	Owners or operators of vessels that are issued an Aquaculture Support Operations Waiver allowing a documented vessel with only a registry endorsement or a foreign-flagged vessel to be used in operations that treat aquaculture fish.
Affected Population	2 vessels.
Costs to Industry and Government ($, 7% discount rate)	10-year: $819.65. Annualized: $116.70.
Unquantified Benefits	Allows the Coast Guard to readily identify vessels with waivers to perform certain aquaculture support operations.

Wellboats (or live fish carriers) were especially affected by CBP's ruling (HQ H105735) that aquaculture activities constitute "engaging in the fisheries" and are thus within the meaning of 46 U.S.C. 108, for which a vessel must possess a Certificate of Documentation endorsed pursuant to 46 U.S.C. 12113. Wellboats are highly specialized vessels that are used to treat farmed salmon. The wellboats are designed to service large inventories of farmed salmon during the salt-water grow-out phase and are specially equipped to protect the fish onboard the vessel. Direct treatment aboard a wellboat is currently the most efficient and effective method to treat salmon. If left untreated, salmon inventories can be destroyed and the industry can lose revenue. There are only a few coastwise qualified wellboats suitable and available for this work. This is why a considered Aquaculture Support Operations Waiver process that would allow inclusion of foreign-flagged wellboats is necessary.

Through this rulemaking, the Coast Guard is amending its regulations to implement subsection 901(c) of the CGAA. Under that provision, the Secretary of DOT has the authority to issue a waiver allowing a documented vessel with only a registry endorsement or a foreign-flagged vessel to be used in certain aquaculture support operations that treat or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if, after posting a notice in the **Federal Register**, the Secretary of DOT determines that no suitable U.S.-flagged vessel is available. Under this rule, a vessel owner or operator of a vessel who has been issued a waiver by MARAD to perform aquaculture support operations will be required to notify and provide a copy of the waiver to the Coast Guard. Through this rulemaking, we are also establishing operational and geographic requirements for a vessel that is issued a waiver by MARAD to perform aquaculture support operations. For more information on these requirements, refer to *§ 106.120 Operational and Geographic Requirements.*

No changes were made in the RA of this final rule as a result of public comments. The only change in this final rule's RA is that we updated the labor rates to reflect the most recent available wage data.

Affected Population

The Coast Guard determined the affected population based on the number of Aquaculture Support Operations Waiver requests from vessel owners and operators. Since the 2010 CBP ruling, only one entity has applied for waivers for foreign-flagged wellboats to treat salmon. This U.S. entity operates two foreign-flagged wellboats, and we anticipate that this entity will continue to apply for Aquaculture Support Operations Waivers in the future. Therefore, this rule is expected to affect one U.S. entity that operates two vessels. Depending on the growth of the salmon aquaculture industry, there is the potential for the number of affected vessels to increase in the future. However, current trends indicate no increase in growth in the salmon aquaculture industry. Therefore, we did not consider, in this analysis, an annual increase in the number of Aquaculture Support Operations Waivers that would be submitted to the Coast Guard.

Costs

In this rule, owners or operators of foreign-flagged vessels, which are issued waivers by MARAD to conduct certain aquaculture support operations, must notify the Coast Guard that such waivers have been issued. The costs of this rule include the costs to the industry to provide copies of the Aquaculture Support Operations Waivers and the costs to the Government to process the information. Aquaculture Support Operations Waivers will be issued on an annual basis per DOT requirements. Owners or operators of the vessels are required to provide copies of these waivers to the Coast Guard annually. Waivers are issued individually for each vessel involved in aquaculture support operations, and therefore, costs are estimated on a per vessel basis.

Industry Costs

The Coast Guard estimates it will take 0.5 hours for a legal secretary to copy and send each Aquaculture Support Operations Waiver to the Coast Guard, via postal mail and electronic mail. The wage rate for a legal assistant was obtained from the U.S. Bureau of Labor Statistics (BLS), using Occupational Series 23–2011, Paralegals and Legal Assistants (May 2014). BLS reports that the mean hourly rate for a legal assistant is $24.92.[5] To account for employee benefits, we use the load factor of 1.43, which we calculated from June 2014 BLS data.[6] The loaded wage rate for a *legal* assistant is estimated at $35.70 per hour ($24.92 wage rate × 1.43 load factor). The expected cost to industry to provide copies of the Aquaculture Support Operations Waiver is $35.70 ($35.70 × 0.5 hours × 2 vessels). The total 10-year undiscounted industry cost of this final rule is $357. Table 2 shows the total 10-year cost of two affected vessels to be $250.74 and annualized cost of $35.70, both discounted at 7 percent.

TABLE 2—TOTAL 10-YEAR COST TO INDUSTRY

Year	Undiscounted costs	Discount rate	
		7%	3%
1	$35.70	$33.36	$34.66
2	35.70	31.18	33.65
3	35.70	29.14	32.67
4	35.70	27.24	31.72
5	35.70	25.45	30.80
6	35.70	23.79	29.90
7	35.70	22.23	29.03
8	35.70	20.78	28.18
9	35.70	19.42	27.36
10	35.70	18.15	26.56
Total	357.00	250.74	304.53
Annualized		35.70	35.70

Note: Total may not add due to rounding.

Government Costs

The Coast Guard estimates it will take 0.5 hours per vessel for Coast Guard personnel at the GS–13 level to record the information from the Aquaculture Support Operations Waivers. The fully loaded wage rate for a GS–13 is $81, per Commandant Instruction 7310.1Q.[7] The total cost for the Coast Guard is $81 [(0.5 hours × $81) × 2 vessels]. The total 10-year undiscounted Government cost of this final rule is $810. Table 3 shows the total Government 10-year discounted cost at $568.91, and the annualized cost at $81, both discounted at 7 percent.

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[5] Mean wage, *http://www.bls.gov/oes/2014/may/oes232011.htm.*

[6] Employer Costs for Employee Compensation news release text provides information on the employer compensation, and can be found at *http://www.bls.gov/schedule/archives/ecec_nr.htm.*

[7] See *http://www.uscg.mil/directives/ci/7000-7999/CI_7310_1Q.pdf.*

TABLE 3—TOTAL GOVERNMENT COST

Year	Undiscounted costs	Discount rate	
		7%	3%
1	$81.00	$75.70	$78.64
2	81.00	70.75	76.35
3	81.00	66.12	74.13
4	81.00	61.79	71.97
5	81.00	57.75	69.87
6	81.00	53.97	67.84
7	81.00	50.44	65.86
8	81.00	47.14	63.94
9	81.00	44.06	62.08
10	81.00	41.18	60.27
Total	810.00	568.91	690.95
Annualized		81.00	81.00

Note: Total may not add due to rounding.

Table 4 displays the total costs on an undiscounted basis, and discounted at 7 percent and 3 percent interest rates, respectively. The total 10-year undiscounted cost of this rule is $1,167. The total 10-year (industry and government) discounted cost of this final rule is $819.65 and the annualized cost is $116.70, both discounted at 7 percent.

TABLE 4—TOTAL COSTS OF THE RULE

Year	Total undiscounted costs	Total, discounted	
		7%	3%
1	$116.70	$109.07	$113.30
2	116.70	101.93	110.00
3	116.70	95.26	106.80
4	116.70	89.03	103.69
5	116.70	83.21	100.67
6	116.70	77.76	97.73
7	116.70	72.67	94.89
8	116.70	67.92	92.12
9	116.70	63.48	89.44
10	116.70	59.32	86.84
Total	1,167.00	819.65	995.47
Annualized		116.70	116.70

Note: Total may not add due to rounding.

Benefits

This rule does not provide any quantitative benefits. However, it does have a qualitative benefit. It provides the Coast Guard with greater maritime domain awareness through the requirement that an owner or operator of a vessel who has received an Aquaculture Support Operations Waiver from MARAD must submit a copy of the waiver to the Coast Guard. The requirement to submit a copy of the waiver to the Coast Guard will ensure that appropriate Coast Guard officials are aware that foreign-flagged vessels or vessels with only registry endorsements are conducting aquaculture support activities in U.S waters pursuant to an Aquaculture Support Operations Waiver issued by DOT under the authority of 46 U.S.C. 12102(d)(1).

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There is one U.S. entity that operates two foreign-flagged vessels that would be affected by this rulemaking at this time. This entity is neither a not-for-profit nor a governmental organization. The North American Industry Classification System (NAICS) for this entity is 424460, Fish and Seafood Merchant Wholesalers. An entity with this NAICS code is considered a small entity if it has less than 100 employees. Using the small entity definition for the NAICS code, we determined the entity is classified as a small entity, since this entity has 40 employees. Table 5 shows information on the U.S. entity classified as a small entity by NAICS code, and the small entity standard size established by the Small Business Administration.

TABLE 5—NAICS CODE AND SMALL ENTITIES SIZE STANDARDS

NAICS code	Description	Small business size standard
424460	Fish and Seafood Merchant Wholesalers	Less than 100 employees.

We reviewed business revenue data provided by a publicly available source[8] and found that this entity has annual revenue estimated at $4,800,000. Therefore, the expected burden on the company from this rulemaking is estimated at less than 0.001 percent of total annual revenue.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. This collection is explained below under Estimate of Total Annual Burden. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of the rule, an owner or operator of a vessel who is issued an Aquaculture Support Operations Waiver to conduct certain aquaculture support operations must notify the Coast Guard that such a waiver has been issued.

Title: Requirements for Vessels that Perform Certain Aquaculture Support Operations.

OMB Control Number: 1625–0126.

Summary of the Collection of Information: An owner or operator of a vessel who is issued a waiver to conduct certain aquaculture support operations must notify the Coast Guard that such a waiver has been issued.

Need for Information: This information is necessary to ensure that appropriate Coast Guard officials are aware that foreign-flagged vessels or documented vessels with only registry endorsements are conducting aquaculture support activities in U.S. waters pursuant to an Aquaculture Support Operations Waiver issued by DOT under the authority of 46 U.S.C. 12102(d)(1).

Use of Information: The Coast Guard would use this information to enhance its maritime domain awareness and to streamline its law enforcement activities by ensuring that Coast Guard law enforcement officials are aware that foreign-flagged vessels or vessels with only a registry endorsement are conducting aquaculture support activities in U.S. waters pursuant to an Aquaculture Support Operations Waiver issued by DOT under the authority of 46 U.S.C. 12102(d)(1).

Description of the Respondents: The respondents are owners or operators of vessels that are issued Aquaculture Support Operations Waivers by MARAD to conduct certain aquaculture support operations.

Number of Respondents: The number of respondents is one per year.

Frequency of Response: Aquaculture Support Operations Waivers are issued on an annual basis, so the frequency of response is one response per vessel, per year.

Burden of Response: The estimated burden for each respondent is 0.5 hours per vessel to copy Aquaculture Support Operations Waivers and send information to the Coast Guard.

Estimate of Total Annual Burden: There is currently one entity operating two vessels that have been issued Aquaculture Support Operations Waivers. The total annual burden would be 1 hour (0.5 hours × 2 vessels). Assuming this task is performed by a legal assistant at a loaded hourly rate of $35.70, the annual cost burden for this requirement is $35.70 ($35.70 loaded wage rate × 1 total entity hours).

You are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has not yet completed its review of this collection. Therefore, we are not making 46 CFR 106.115 effective until OMB completes action on our information collection request, at which time we will publish a **Federal Register** notice describing OMB's action and, if OMB grants approval, notifying you when that provision takes effect.

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements as described in E.O. 13132. Our analysis is explained below.

This rule implements subsection 901(c) of the CGAA. Subsection 901(c) amends section 12102 of chapter 121 of 46 U.S.C. by adding a waiver of certain Federal vessel documentation requirements for vessels performing aquaculture support operations. In paragraph 901(c)(2), Congress granted the Coast Guard, via delegation from the Secretary, exclusive authority to promulgate regulations that are necessary and appropriate for permitting nonqualified vessels to perform certain aquaculture support operations. Therefore, 46 CFR part 106 is established within a field foreclosed from State or local regulation. In light of the analysis above, this rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

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[8] MANTA (*http://www.manta.com/*) is an online business service directory and search engine that provides business revenue and size data.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370f, and have determined that it is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final environmental analysis checklist supporting this determination is available in the docket. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraphs 34(a) and 34(d) of the Instruction. These paragraphs respectively pertain to promulgation of regulations that are editorial or procedural in nature, and those concerning vessel documentation requirements. This rule entails a minor regulatory change pertaining to vessels used in certain aquaculture operations and the Coast Guard's notification requirements for those vessels. Specifically, DOT has the authority to issue waivers allowing a documented vessel with a registry endorsement or a foreign-flagged vessel to be used in aquaculture support activities. The new part establishes the requirement for an owner or operator of a vessel that is issued a waiver to notify the Coast Guard. The part also establishes operational and geographic requirements for vessels that are issued such a waiver.

List of Subjects in 46 CFR Part 106

Aquaculture operations, Coastwise, Fishing vessels, Registry endorsement, Waiver.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR by adding part 106 to read as follows:

Title 46—Shipping

PART 106—REQUIREMENTS FOR NONQUALIFIED VESSELS THAT PERFORM CERTAIN AQUACULTURE SUPPORT OPERATIONS

Sec.
106.100 Purpose.
106.105 Applicability.
106.110 Definitions.
106.115 Notification requirements.
106.120 Operational and geographic requirements.
106.125 Penalties.

Authority: Sec. 901(c)(2), Pub. L. 111–281, 124 Stat. 2905, Title IX; Department of Homeland Security Delegation No. 0170.1.

§ 106.100 Purpose.

The regulations in this part implement 46 U.S.C. 12102(d).

§ 106.105 Applicability.

The regulations in this part apply to a documented vessel with only a registry endorsement or a foreign-flagged vessel that has been issued an Aquaculture Support Operations Waiver by the Department of Transportation (DOT) under 46 U.S.C. 12102(d)(1), for the purpose of conducting aquaculture support operations.

§ 106.110 Definitions.

Aquaculture support operations means activities that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health.

§ 106.115 Notification requirements.

(a) Prior to operating in U.S. waters, a vessel owner, operator, or charterer that has been issued an Aquaculture Support Operations Waiver by DOT's Maritime Administration (MARAD) to conduct aquaculture support operations must notify the Coast Guard in writing of its status. The notification must include the following information:

(1) The vessel(s) name(s);

(2) The vessel's official and/or International Maritime Organization number;

(3) The geographic location within the waters of the United States where the vessel(s) will conduct treatment operations;

(4) The period of time during which the Aquaculture Support Operations Waiver for the vessel(s) is approved including:

(i) The start date (MM/DD/YYYY); and

(ii) The expiration date (MM/DD/YYYY); and

(5) A copy of the MARAD-issued Aquaculture Support Operations Waiver.

(b) Written notification must be made to the Commandant (CG–CVC), ATTN: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501, or by email to *CG-CVC-3@uscg.mil.*

§ 106.120 Operational and geographic requirements.

(a) Vessels with a MARAD-issued Aquaculture Support Operations Waiver, issued under 46 U.S.C. 12102(d)(1), for the purpose of performing aquaculture support operations are subject to the following restrictions:

(1) Commercial operations in U.S. waters other than operations that treat or protect aquaculture fish are prohibited;

(2) While conducting aquaculture support operations, vessels will operate solely within the geographic location(s) identified in the waiver issued by MARAD; and

(3) Vessels will not conduct aquaculture support operations beyond the period of time approved in the waiver issued by MARAD.

(b) Vessels conducting aquaculture support operations will, at all times, maintain a copy of the waiver issued by MARAD on board the vessel as proof of its eligibility to conduct aquaculture support operations.

§ 106.125 Penalties.

A person who violates any requirement prescribed by the regulations in this part is subject to penalty under 46 U.S.C. 12151.

Dated: September 9, 2016.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2016–22097 Filed 9–14–16; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 81, No. 179
Thursday, September 15, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 7

[Docket ID OCC–2016–0022]

RIN 1557–AD93

Industrial and Commercial Metals

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC is proposing to prohibit national banks and federal savings associations from dealing and investing in industrial and commercial metal.

DATES: You must submit comments by November 14, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title "Industrial and Commercial Metals" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal— "Regulations.gov":* Go to *www.regulations.gov*. Enter "Docket ID OCC–2016–0022" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., suite 3E–218, mail stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, mail stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2016–0022" in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov*. Enter "Docket ID OCC–2016–0022" in the Search box and click "Search." Click on "Open Docket Folder" on the right side of the screen and then "Comments." Comments can be filtered by clicking on "View All" and then using the filtering tools on the left side of the screen.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. Supporting materials may be viewed by clicking on "Open Docket Folder" and then clicking on "Supporting Documents." The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Casey Scott Laxton, Counsel, Beth Kirby, Assistant Director, or Ted Dowd, Director, Securities and Corporate Practices Division, (202) 649–5510; Carl Kaminski, Special Counsel, Legislative and Regulatory Activities Division, (202) 649–5490.

SUPPLEMENTARY INFORMATION:

I. Background

A national bank may engage in activities that are part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh). Section 24(Seventh) lists several activities that are part of the business of banking; for example, it expressly provides that national banks may buy and sell exchange, coin, and bullion.

In addition to these enumerated powers, section 24(Seventh) authorizes national banks to exercise all such incidental powers as shall be necessary to carry on the business of banking. National banks also are authorized to engage in any other activities not expressly enumerated in the statute that the Comptroller of the Currency reasonably determines are part of the business of banking.[1]

In Interpretive Letter 693,[2] issued approximately twenty years ago, the OCC authorized national banks to buy and sell copper on the grounds that trading copper was becoming increasingly similar to trading gold, silver, platinum, and palladium. The letter observed that copper was traded in liquid markets; that it was traded in a form standardized as to weight and purity; and that the bank seeking authority to engage in the activity traded copper under policies and procedures similar to those that governed trading precious metals. The letter concluded that national banks could buy and sell copper under the express authority to buy and sell coin and bullion and as part of or incidental to the business of banking. The scope of the authorization in Interpretive Letter 693 was sufficiently broad to permit national banks to buy and sell copper in the form of cathodes, which are used for industrial purposes.

In this notice of proposed rulemaking, the OCC proposes to prohibit national banks from dealing and investing in a metal (or alloy), including copper, in a form primarily suited to industrial or commercial use (industrial or commercial metal).[3] The proposal: (i) Excludes industrial and commercial metals from the terms "exchange," "coin," and "bullion" in 12 U.S.C. 24(Seventh); and (ii) provides that dealing or investing in them is not part of, or incidental to, the business of banking. Examples of metals and alloys in a form primarily suited for industrial or commercial use include copper cathodes, aluminum T-bars, and gold jewelry. The OCC does not believe that dealing or investing in these metals is appropriate for national banks. The proposed rule would supersede Interpretive Letter 693.[4]

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[1] NationsBank of N.C., N.A. v. Var. Ann. Life. Ins. Co., (VALIC) 513 U.S. 251, 258–59 (1995).

[2] 1995 WL 788816 (Nov. 14, 1995).

The proposed rule also applies to federal savings associations (FSA). The Home Owners' Loan Act does not expressly authorize FSAs to buy or sell exchange, coin, and bullion.[5] FSAs do have incidental authority to buy and sell precious metals in certain cases and to sell gold and silver coins minted by the U.S. Treasury.[6] However, the OCC is not aware of any precedent authorizing FSAs to buy and sell any industrial or commercial metal. The OCC does not interpret FSAs' incidental powers to buy and sell metals to be broader than those of national banks. To avoid doubt, and to further integrate national bank and FSA regulations, the proposed rule prohibits FSAs from dealing and investing in industrial or commercial metal.[7]

II. Description of the Proposed Rule

A. Industrial or Commercial Metal Is Not "Exchange, Coin, and Bullion"

As noted above, the National Bank Act authorizes national banks to buy and sell exchange, coin, and bullion. In this notice of proposed rulemaking, the OCC is proposing to exclude from the scope of these terms metals in a form primarily suited to industrial or commercial use.

Banking Circular 58 (BC–58)[8] sets forth general guidelines that apply to national banks' coin and bullion activities. It defines "coin" as "coins held for their metallic value which are minted by a government, or exact restrikes of such coins minted at a later date by or under the authority of the issuing government." Contemporaneous OCC interpretive letters elaborated that "coin" referred only to media of exchange.[9] BC–58 defines "bullion" as "uncoined gold or silver in bar or ingot form." These definitions do not encompass industrial or commercial metal.

Interpretive letters published after BC–58 interpreted national banks' authority to buy coin and bullion to include other precious metals, namely platinum and palladium. Consistent with BC–58's definition of "coin," the OCC in 1987 found that legal tender platinum coins held for their metallic value were "coin."[10] That same letter prohibited dealing in platinum bars. However, in 1991, the OCC concluded that market developments warranted treating platinum bars as bullion.[11] The OCC also found trading in platinum bars to be incidental to trading in platinum coins.[12] For similar reasons, the OCC concluded palladium was coin and bullion and national banks could trade and deal in palladium as part of the business of banking.[13] In support of its position, the OCC noted that the London Platinum and Palladium Market had linked platinum and palladium for market making and regulatory purposes and that most of the Market's members were banks.

However, other interpretive letters recognized that not every precious metal is coin or bullion. Jewelry, the OCC determined, is not.[14]

The OCC proposes to conclude that "exchange, coin, and bullion" does not encompass industrial or commercial metal. The OCC believes this conclusion is consistent with the National Bank Act and current market practice. For example, in the mid-19th century, when Congress passed the National Bank Act, "bullion" meant metal suitable for coining, not metal suitable for making wires.[15] The contemporary understanding of "bullion" is broader—most currency is no longer made of precious metal—but the contemporary understanding does distinguish bullion from industrial or commercial metal. For example, modern bullion markets trade precious metals by the kilogram.[16] By contrast, industrial and commercial metals markets trade base metals in quantities suitable for industrial or commercial use.[17] The following table illustrates trading differences between bullion markets and industrial or commercial metal markets.

Contract	Contract size
Industrial/Commercial Metal Markets	
LME physical copper	25,000 kg.

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[3] The OCC considers the definition of *industrial or commercial metal* to include a warehouse receipt for such metal.

[4] *See* Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 981–82 (2005) (agency reconsiderations of prior interpretations entitled to judicial deference so long as the agency adequately explains the reasons for the change).

[5] *See* 12 U.S.C. 1464(c).

[6] *See, e.g.,* OTS Op. Ch. Couns. P–2006–1 (Mar. 6, 2006), 2006 WL 6195026 (engaging in precious metal transactions on behalf of customers); Gold Bullion Coin Transactions, 51 FR 34950 (Oct. 1, 1986); Letter from Jack D. Smith, Deputy General Counsel, Federal Home Loan Bank Board, 1988 WL 1021651 (May 18, 1988). All precedents (orders, resolutions, determinations, agreements, regulations, interpretive rules, interpretations, guidelines, procedures, and other advisory materials) made, prescribed, or allowed to become effective by the former Office of Thrift Supervision or its Director that apply to FSAs remain effective until the OCC modifies, terminates, sets aside, or supersedes those precedents. 12 U.S.C. 5414(b).

[7] The proposed rule indirectly applies to federal branches and agencies of foreign banks because they operate with the same rights and privileges (and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations) as national banks. 12 CFR 28.13(a)(1). The proposed rule also indirectly applies to insured state banks and state savings associations. *See* 12 U.S.C. 1831a, 1831e.

[8] BC–58 (Rev.) (Nov. 3, 1981). The OCC published the original version in 1974.

[9] Interpretive Letter 326 (Jan. 17, 1985), 1985 WL 202590; Interpretive Letter 252 (Oct. 26, 1982), 1982 WL 54157; Letter from Peter Liebesman, Assistant Director, Legal Advisory Services Division (Feb. 18, 1982), 1982 WL 170844. *But see* Letter from Richard V. Fitzgerald, Deputy Chief Counsel (Nov. 4, 1983), 1983 WL 145720 (concluding that national banks could purchase and sell the Department of Treasury's commemorative Olympic coins based on their metallic value even though it was unlikely that the coins would be used as a medium of exchange).

[10] Letter from William J. Stolte, Chief National Bank Examiner (July 29, 1987), 1987 WL 149775.

[11] Interpretive Letter 553 (May 2, 1991), 1991 WL 340660 (noting that (i) the financial press considered platinum coins and bars to be bullion and (ii) a state statute defined "bullion" to include platinum).

[12] *Id.*

[13] Interpretive Letter 685 (Aug. 4, 1995), 1995 WL 550220.

[14] *See* No-Objection Letter 88–8 (May 26, 1988), 1988 WL 284872 (selling gold and silver jewelry is impermissible general merchandising); Letter from Madonna K. Starr, Attorney (Oct. 3, 1986), 1986 WL 144029 (limited design jewelry is not exchange, coin, or bullion).

[15] *See* Act of June 22, 1874, 18 Stat. 202 (authorizing the transfer from the U.S. bullion fund of refined gold bars bearing the United States stamp of fineness, weight, and value, or bars from any melt of foreign coin or bullion of standard equal to or above that of the United States); Act of Feb. 12, 1873 § 31, 17 Stat. 429 (The bullion thus placed in the hands of the melter and refiner shall be subjected to the several processes which may be necessary to form it into ingots of the legal standard, and of a quality suitable for coinage.)

[16] *See, e.g.,* London Bullion Market Association, *The Good Delivery Rules for Gold and Silver Bars* 11 (Mar. 2015), *available at http://www.lbma.org.uk/assets/market/gdl/GD_Rules_15_Final%2020160512.pdf;* London Platinum & Palladium Market, "The London/Zurich Good Delivery List," *http://www.lppm.com/good-delivery/* (visited July 19, 2016).

[17] The London Metal Exchange (LME) describes itself as the "world centre for the trading of industrial metals—more than three quarters of all non-ferrous metal futures business is transacted on [its] platforms." LME, "About us," *http://www.lme.com/about-us* (visited July 19, 2016). The LME trades aluminum, aluminum alloys, copper, lead, nickel, tin, and zinc. LME, "Metals," *http://www.lme.com/metals* (visited July 19, 2016).

Contract	Contract size
LME copper future	25,000 kg.
COMEX copper future	25,000 lbs. (about 11,340 kg).
SHFE copper future ..	5,000 kg.
LME physical aluminum.	25,000 kg.
LME aluminum future	25,000 kg.
COMEX aluminum future.	25,000 kg.
SHFE aluminum future.	5,000 kg.
Bullion Markets	
LBMA physical gold ..	350–430 troy oz. (about 11–13 kg).
LBMA physical silver	750–1100 troy oz. (about 23–34 kg).
LPPM physical platinum.	1–6 kg.
LPPM physical palladium.	1–6 kg.

Key:
LME: London Metals Exchange.
COMEX: Commodity Exchange.
SHFE: Shanghai Futures Exchange.
LBMA: London Bullion Market Association.
LPPM: London Platinum & Palladium Market.

In general, gold, silver, platinum, and palladium are bullion today because they:

- Trade in troy ounces or grams rather than metric tons; [18]
- Trade in pure forms; [19]
- Trade in a form suitable for coining;
- Trade as precious metals in the world's major organized markets, including the London bullion markets; and
- Are considered currency by the International Organization for Standardization.[20]

Gold, silver, platinum, and palladium in industrial or commercial form are not exchange, coin, or bullion.

B. Dealing and Investing in Industrial or Commercial Metal Is Neither Part of, Nor Incidental to, the Business of Banking

Interpretive Letter 693 concluded that national banks could buy and sell copper (including industrial copper) as a part of or incidental to the business of banking. The OCC has reviewed the bases for the conclusion in Interpretive Letter 693 that buying and selling industrial copper is part of the business of banking, including developments in copper markets that followed this letter. For the following reasons, the OCC now believes that buying and selling copper—or any other metal—in industrial or commercial form for the purpose of dealing or investing in that metal is not part of the business of banking.

When the OCC issued Interpretive Letter 693 in 1995, the agency noted increasing similarity between transactions involving copper and those transactions already conducted by national banks with respect to gold, silver, platinum and palladium (precious metals). This increasing similarity informed the OCC's view at that time that buying and selling copper, including dealing and investing, was part of the business of banking. However, copper markets have not increased in similarity to precious metal markets.[21] Instead, as noted in detail above, copper is generally traded as a base metal.[22]

The OCC believes that dealing and investing in industrial or commercial metals, including base and precious metals in this form, is not the functional equivalent of dealing and investing in coin and bullion. The paradigmatic example of functional equivalence is that a lease is in economic substance a secured loan.[23] But the significant differences between dealing in industrial or commercial metals and dealing in coin and bullion demonstrate that the former is not, in economic substance, the same as the latter. Most importantly, industrial and commercial metals trade in base metal markets by the ton in cathode or other industrial form, while coin and bullion trade in precious metal markets by the troy ounce or kilogram in bar or ingot form. In addition, banks' risk management systems distinguish between precious metals and base metals.

The OCC has also considered other factors identified in relevant precedent for determining whether dealing in or investing in industrial or commercial metal is part of the business of banking.[24] The OCC does not believe that analysis under these factors supports a conclusion at this time that this activity is part of the business of banking. For example, the OCC has not seen evidence that this activity strengthens a bank by benefiting its customers or its business.[25] Nor is the OCC aware of any state-chartered banks dealing in or investing in industrial or commercial metal.[26] Indeed, the OCC has not identified any precedent authorizing that activity for state banks.

As described above, under 12 U.S.C. 24 (Seventh), a national bank has the power to exercise all such incidental powers as shall be necessary to carry on the business of banking. An activity is incidental to the business of banking if it is convenient or useful to an activity that is part of the business of banking.[27]

The OCC believes that dealing and investing in industrial or commercial metal is not incidental to the business of banking. Some customers may wish to trade industrial or commercial metal with national banks. However, because few banks buy or sell industrial or commercial metal in the ordinary course of business, it does not appear that dealing or investing in industrial or commercial metal significantly enhances national banks' ability to offer banking products and services, including those related to precious metals. Moreover, dealing and investing in industrial or commercial metal does not appear to enable national banks to use capacity acquired for banking operations or otherwise avoid economic loss or waste. Therefore, the OCC concludes national banks may not deal or invest in industrial or commercial metal under their incidental powers.

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[18] *See, e.g.*, Bloomberg, "Gold, Silver, and Industrial Metals Prices," *http://www.bloomberg.com/markets/commodities/futures/metals.*

[19] *See, e.g.*, London Bullion Market Association, *The Good Delivery Rules for Gold and Silver Bars* 6 (Mar. 2015) (minimum fineness for gold is 99.5 percent and for silver is 99.9 percent); London Platinum & Palladium Market, "The London/Zurich Good Delivery List," *http://www.lppm.com/good-delivery/* (minimum fineness for platinum and palladium is 99.95 percent).

[20] ISO 4217 (Aug. 1, 2015), *available at http://www.currency-iso.org/dam/downloads/lists/list_one.xls.*

[21] Events subsequent to Interpretive Letter 693 have confirmed copper's status as a base metal. In 2000, the LME introduced a future on a base metal index containing copper, aluminum, lead, nickel, tin, and zinc. Then, in 2006, it introduced "mini" futures for copper, aluminum, and zinc. Similarly, many firms have launched exchange-traded funds (ETFs) that invest solely in gold, silver, palladium, platinum, or some combination thereof, indicating a widespread belief that these metals are a store of value. However, there is no copper ETF. Finally, the OCC understands that national banks that trade copper treat it as a base metal and trade it alongside aluminum and zinc rather than gold and silver.

[22] *See generally* U.S. Senate Permanent Subcommittee on Investigations, *Wall Street Bank Involvement with Physical Commodities* 364 (2014) (identifying banks, trading firms, analysts, and exchanges that treat copper as a base metal for trading and risk management purposes).

[23] *See M&M Leasing Corp.* v. *Seattle First Nat'l Bank*, 563 F.2d 1377 (9th Cir. 1977).

[24] *See, e.g., Merchants' Nat'l Bank* v. *State Nat'l Bank,* 77 U.S. 604, 648 (1871) (holding that national banks could certify checks because the activity had "grown out of the business needs of the country.").

[25] Currently, national banks' dealing and investments in industrial or commercial metal are limited, suggesting that the business needs of the United States economy are not meaningfully affected by national banks' dealing in industrial or commercial metal. Nor is there evidence that the amount of revenue from industrial or commercial metal dealing and investing meaningfully improve national banks' financial strength. In any case, the prospect for additional revenue alone is not sufficient to deem an activity to be part of the business of banking. *See* VALIC, 513 U.S. at 258 n.2. *See also* No-objection Letter 88–8 (May 26, 1988), 1988 WL 284872 (concluding that it is impermissible for a national bank to make substantial profits from the sale of merchandise).

[26] *See Colorado Nat'l Bank* v. *Bedford,* 310 U.S. 41, 49–50 (1940).

[27] Interpretive Letter 1071 (Sept. 6, 2006), 26 OCC Q.J. 46, 2007 WL 5122909 (citing *Arnold Tours, Inc.* v. *Camp,* 472 F.2d 427, 431–32 (1st Cir. 1972)).

C. Transactions in Industrial or Commercial Metal That May Be Permissible

National banks do have incidental authority to buy and sell industrial or commercial metal in limited cases. Buying or selling industrial or commercial metal could be incidental to lending activities. For example, a mining company could post a copper cathode as collateral for a loan. Pursuant to the national bank's authority to acquire property in satisfaction of debt previously contracted, the bank could seize and then sell the copper to mitigate loan losses if the borrower defaulted.[28] National banks also have incidental authority to buy and sell nominal amounts of industrial or commercial metal to hedge customer-driven commodity derivatives.[29] The proposed rule would not prohibit these purchases and sales because they are not dealing or investing.[30]

The OCC views national banks' lending authority [31] as including buying and selling industrial or commercial metal under reverse repurchase agreements that are the functional and economic equivalent of secured loans. As described below, a standard reverse repurchase agreement for metal used to provide financing to a bank customer ordinarily does not indicate dealing or investing in the metal. However, the OCC notes that the facts and circumstances of a particular transaction may warrant a different conclusion. For example, to the extent a reverse repurchase agreement or related activity is structured in a way that causes a bank to incur commodity price risk or indicates market speculation, the OCC may view the transaction to be dealing or investing in the metal.

In a reverse repurchase agreement, a bank extends credit by simultaneously buying collateral from a client and agreeing to sell the collateral back to the client at a future date. The difference between the sale and purchase price is effectively the interest the client pays for the extension of credit. If the reverse repurchase agreement counterparty defaults, the bank can mitigate its losses by selling the collateral without first foreclosing on it. Financing customer inventory is a traditional bank activity; using reverse repurchase agreements rather than loans to provide the financing is merely a different way of providing financing.[32] Financing customer inventory using reverse repurchase agreements in itself does not indicate dealing or investing in the metal. However, pledging, selling, or rehypothecating metal acquired under reverse repurchase agreements suggests dealing or investing activity. So, too, does assuming commodity price risk. For example, an agreement in which the counterparty sells a metal at a certain price to the bank and then repurchases the metal at a price that depends on the metal's then-current market price indicates dealing or investing activity: The bank is assuming the metal's price risk. On the other hand, setting the repurchase price at the sale price plus a spread based on the time value of money is equivalent to a secured loan.

The OCC invites comment on the treatment of reverse repurchase agreements under the proposed rule. In particular, the OCC seeks comment on whether reverse repurchase agreements that do not present commodity price risk for a bank and do not indicate market speculation are appropriately viewed to not indicate dealing or investing in metal. The OCC also seeks comment on whether there are forms of reverse purchase agreements or related activities that warrant a determination that the activity is dealing or investing in metal. If so, should the OCC include such agreements in the final rule's dealing or investing prohibition?

The proposal does not prohibit national banks from buying and selling metal through transitory title transfers entered into as part of a customer-driven financial intermediation business.[33] Metal owned through a transitory title transfer typically does not entail physical possession of a commodity; the ownership occurs solely to facilitate the underlying transaction and lasts only for a moment in time. For these reasons, the OCC does not consider transitory title transfers to be dealing or investing in industrial or commercial metal for purposes of this proposal. Interpretive Letter 1073 [34] provides that national banks may hedge metal derivative transactions on a portfolio basis with over-the-counter derivative transactions that settle in cash or transitory title transfer. Interpretive Letter 1073 also provides that a national bank may engage in transitory title transfers in metals for the accommodation of customers. The OCC concluded in Interpretive Letter 1073 that transitory title transfers involving metals do not entail the physical possession of commodities.[35] The OCC's analysis in this letter noted that transitory title transfers do not involve the customary activities relating to, or risks attendant to, commodity ownership, such as storage costs, insurance, and environmental protection. The OCC continues to believe that transitory title transfers do not constitute physical possession of commodities and therefore does not consider transitory title transfers to be dealing or investing in industrial or commercial metal for purposes of this proposal.[36]

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[28] *Cf. Cooper* v. *Hill*, 94 F. 582 (8th Cir. 1899) (foreclosure of a mine); *First Nat'l Bank of Parker* v. *Peavy Elevator Co.*, 10 S.D. 167, 170 (1897) (foreclosure of grain seed and subsequent sale).

[29] Interpretive Letter 684 (Aug. 4, 1995), 1995 WL 550219; OCC Bulletin 2015–35, Quantitative Limits on Physical Commodity Transactions (Aug. 4, 2015) (explaining that "nominal" means 5 percent of the bank's short positions in a particular commodity).

[30] *Cf. First Nat'l Bank* v. *Nat'l Exch. Bank*, 92 U.S. 122, 128 (1875) ("In the honest exercise of the power to compromise a doubtful debt owing to a bank, it can hardly be doubted that stocks may be accepted in payment and satisfaction, with a view to their subsequent sale or conversion into money so as to make good or reduce an anticipated loss. Such a transaction would not amount to a dealing in stocks. It was, in effect, so decided in *Fleckner* v. *Bank U.S.*, 8 Wheat. 351 [22 U.S. 338 (1823)], where it was held that a prohibition against trading and dealing was nothing more than a prohibition against engaging in the ordinary business of buying and selling for profit, and did not include purchases resulting from ordinary banking transactions.").

Similarly, national banks may buy and sell industrial or commercial metal as part of their leasing business. 12 U.S.C. 24 (Seventh); 12 U.S.C. 24 (Tenth); 12 CFR 23.4. A car, for example, contains metal in a commercial form, but buying a car to lease it is not dealing or investing in commercial metal. Rather, a lease, like a reverse repurchase transaction, is a secured loan in a different form. National banks may also buy and sell industrial or commercial metals to install pipes and electrical wiring in their physical premises. 12 U.S.C. 29 (First); 12 CFR 7.1000. This activity is clearly not dealing or investing in industrial or commercial metal.

[31] *See* 12 U.S.C. 24 (Seventh) (stating that discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt and loaning money on personal security are part of the business of banking).

[32] Under the National Bank Act, credit exposures from repurchase and reverse repurchase agreements are loans and extensions of credit subject to a national bank's lending limits. 12 U.S.C. 84(b)(1)(C). *See also* Letter from Charles F. Byrd, Assistant Director, Legal Advisory Services Division, [1978–1979 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,020 (Aug. 30, 1977) (repurchase and reverse repurchase agreements are extensions of credit subject to 12 U.S.C. 82 (repealed by Garn–St. Germain Depository Institutions Act of 1982, Pub. L. 97–320, 402)).

[33] For purposes of this proposal, the OCC considers a transitory title transfer to be back-to-back contracts providing for the receipt and immediate transfer of title to the metal. This means that a bank holds title to the metal for no more than a legal instant. *See* Interpretive Letter 962 (Apr. 21, 2003), 2003 WL 21283155 ("[T]ransitory title transfers preclude actual delivery by passing title down the chain from the initial seller to the ultimate buyer in a series of instantaneous back-to-back transactions. Each party in the chain has title for an instant but does not take actual physical delivery (other than the ultimate buyer which, in no case, will be the Bank.")).

[34] 26 OCC Q.J. 46, 2007 WL 5122911 (Oct. 19, 2006).

[35] *See also* OCC Bulletin 2015–3 (Aug. 4, 2015) (noting that a physical commodity that a bank acquired and then immediately sold by transitory title transfer would not be included in the bank's physical inventory of that commodity).

Notwithstanding the above, the OCC may consider alternative approaches for transitory title transfers in the final rule if it determines that these transactions present risks similar to holding physical metal. The OCC invites comment on whether it should continue to view transitory title transfers as transactions that do not entail physical possession of a commodity. In particular, the OCC seeks comment on whether transitory title transfers involving metals present risks that warrant treating such transactions as physical holdings. If so, then the prohibition on dealing and investing in industrial or commercial metal would apply to metals bought or sold by transitory title transfer.[37]

III. Request for Comment

The OCC invites comment on all aspects of this proposal, including the questions in part II.C of this Supplementary Information.

In addition, the OCC requests comment on the appropriate treatment of existing holdings of industrial or commercial metal. In other contexts, the OCC provides five years to divest nonconforming assets, with the possibility of a five-year extension. Are there reasons a similar approach would not work here? Are there compelling reasons to grandfather existing holdings indefinitely?

IV. Regulatory Analysis

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501–3520, the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. This notice of proposed rulemaking does not introduce any new collections of information, therefore, it does not require a submission to OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As of December 31, 2015, the OCC supervised 1,032 small entities.[38] Although the rule applies to all OCC-supervised small entities, and thus affects a substantial number of small entities, no small entities supervised by the OCC currently buy or sell metal in a physical form primarily suited to commercial or industrial use for the purpose of dealing or investing in that metal. Thus, the rule will not have a substantial impact on any OCC-supervised small entities.

Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

Although the proposed rule would apply to all OCC-supervised institutions, very few of these institutions are currently involved in activities involving dealing or investing in copper or other metals in a physical form primarily suited to commercial or industrial use.

While the proposed rule may prevent OCC-supervised institutions from realizing potential gains from prohibited investments in physical metals, the proposed rule also may protect them from realizing potential losses from investments in physical metals. The OCC is not able to estimate these potential gains or losses because they will depend on future fluctuations in the prices of the various physical metals. However, the OCC does expect OCC-supervised institutions to be able to achieve comparable returns in alternative non-prohibited investment opportunities. Thus, the OCC estimates that the opportunity cost of the proposed rule will be near zero.

The proposed rule may impose one-time costs on affected institutions with respect to the disposal of current physical metal inventory that a bank may not deal in or invest in under the rule. This cost will depend to some extent on the amount of physical metal inventory that affected institutions must dispose of. However, a gradual sell-off should not affect market prices and the affected institutions would receive fair value for their metals. Under these circumstances, the OCC estimates that the disposal costs will also be minimal.

Finally, by establishing that buying and selling physical metal in commercial or industrial form is generally not part of the business of banking, the rule implies that customers of OCC-supervised institutions will have to identify another reliable source of supply of physical metals and that OCC-supervised institutions will be less able to compete with non-bank metals dealers. Given how technology has made the physical metals markets more accessible, the OCC expects bank customers will face minimal costs associated with identifying another supplier of physical metals. The OCC also expects that losing the ability to compete with non-bank metal dealers will not significantly detract from the strength of OCC-supervised institutions, especially given that the proposed rule would recognize several business-of-banking exceptions to the prohibition on buying and selling physical metal.

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[36] In contrast to transitory title transfers, the OCC considers a commodity held by warehouse receipt for more than a legal instant to entail physical possession of the commodity. *See* OCC Bulletin 2015–3 ("[A] bank that satisfies certain conditions may engage in physical commodity transactions (for example, by buying or selling title to a commodity via a warehouse receipt or bill of lading) to manage the risks of commodity derivatives.")); Interpretive Letter 684 (August 4, 1995), 1995 WL 550219 (recognizing physical possession of a commodity by warehouse receipt). The OCC notes that the customary activities relating to, or risks attendant to, commodity ownership by warehouse receipt are distinguishable from those involving transitory title transfer. For example, Interpretive Letter 684 provides that the OCC expects a bank engaged in physical commodity hedging, either through warehouse receipt or "pass-through" delivery, to adopt and maintain "safeguards designed to manage the risks associated with storing, transporting, and disposing of commodities of which the bank has taken delivery, including policies and procedures designed to ensure that the bank has adequate levels of insurance (including insurance for environmental liabilities) which, after deductions, are commensurate with the risks assumed."

[37] The OCC notes that even if it determines that a transitory title transfer entails physical possession of a commodity, national banks engaged in a customer-driven financial intermediation business could still enter into such transactions under the proposal, provided the transaction is a hedge and is nominal.

[38] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or federal savings association as a small entity. The OCC used December 31, 2015, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the SBA's *Table of Size Standards*.

For the reasons described above, the OCC has determined that the proposed rule would not result in expenditures by state, local, and Tribal governments, or by the private sector, of $100 million or more. Accordingly, the OCC has not prepared a written statement to accompany the proposed rule.

List of subjects in 12 CFR Part 7

Banks, banking, Computer technology, Credit, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

For the reasons set forth in the preamble, OCC proposes to amend 12 CFR part 7 as follows:

PART 7—BANK ACTIVITIES AND OPERATIONS

■ 1. The authority citation for part 7 is amended to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 71, 71a, 92, 92a, 93, 93a, 371, 371a, 481, 484, 1463, 1464, 1818, and 5412(b)(2)(B).

■ 2. Add § 7.1022 to subpart A to read as follows:

§ 7.1022 National bank authority to buy and sell exchange, coin, and bullion.

(a) In this section, *industrial or commercial metal* means metal (including an alloy) in a physical form primarily suited to industrial or commercial use, for example, copper cathodes.

(b) *Scope of authorization.* Section 24 (Seventh) of the National Bank Act authorizes national banks to buy and sell exchange, coin, and bullion. Industrial or commercial metal is not exchange, coin, and bullion within the meaning of this authorization.

(c) *Buying and selling metal as part of or incidental to the business of banking.* Section 24 (Seventh) authorizes national banks to engage in activities that are part of, or incidental to, the business of banking. Buying and selling industrial or commercial metal for the purpose of dealing or investing in that metal is not part of or incidental to the business of banking pursuant to section 24 (Seventh).

(d) *Other authorities not affected.* This section shall not be construed to preclude a national bank from acquiring or selling metal in connection with its incidental authority to foreclose on loan collateral, compromise doubtful claims, or avoid loss in connection with a debt previously contracted. This section also shall not be construed to preclude a national bank from buying and selling physical metal to hedge a derivative for which that metal is the reference asset so long as the amount of the physical metal used for hedging purposes is nominal.

■ 3. Add § 7.1023 to subpart A to read as follows:

§ 7.1023 Federal savings associations, prohibition on industrial or commercial metal dealing or investing.

(a) In this section, *industrial or commercial metal* means metal (including an alloy) in a physical form primarily suited to industrial or commercial use, for example, copper cathodes.

(b) Federal savings associations may not deal or invest in industrial or commercial metal. Federal savings associations may not buy or sell industrial or commercial metal if the purchase or sale is impermissible for a national bank.

Dated: September 7, 2016

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2016–22017 Filed 9–14–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9075; Directorate Identifier 2016–NM–082–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 and 787–9 airplanes. This proposed AD was prompted by a report indicating that a portion of the sealant above the engine pylon between the wing skin and the vapor barrier may have been omitted. This proposed AD would require an inspection for missing sealant in the seam on the outside and inside of the engine struts, and corrective actions if necessary. We are proposing this AD to detect and correct missing sealant above the engine pylon between the wing skin and the vapor barrier, which can create an unintended leak path for fuel, potentially draining onto the aft fairing heat shield above the engine and onto hot engine parts or brakes, which could lead to a major ground fire.

DATES: We must receive comments on this proposed AD by October 31, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9075.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9075; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sherry Vevea, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6514; fax: 425–917–6590; email: *sherry.vevea@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9075; Directorate Identifier 2016–NM–082–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report indicating that a portion of the sealant above the engine pylon between the wing skin and the vapor barrier may have been omitted due to a manufacturing sequencing issue. This condition, if not corrected, can create an unintended leak path for fuel, potentially draining onto the aft fairing heat shield above the engine and onto hot engine parts or brakes, which could lead to a major ground fire.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB570029–00, Issue 001, dated February 23, 2016. The service information describes procedures for doing an inspection for missing sealant in the seam on the outside and inside of the engine struts, and installing missing sealant. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9075.

The phrase "corrective actions" is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Costs of Compliance

We estimate that this proposed AD affects 32 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	3 work-hours × $85 per hour = $255	$0	$255	$8,160

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	Up to 3 work-hours × $85 per hour = $255	[1]	[1]

[1] We have received no definitive data that would enable us to provide cost estimates for the on-condition material costs specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–9075; Directorate Identifier 2016–NM–082–AD.

(a) Comments Due Date

We must receive comments by October 31, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB570029–00, Issue 001, dated February 23, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 57; Wings.

(e) Unsafe Condition

This AD was prompted by a report indicating that a portion of the sealant above the engine pylon between the wing skin and the vapor barrier may have been omitted. We are issuing this AD to detect and correct missing sealant above the engine pylon between the wing skin and the vapor barrier, which can create an unintended leak path for fuel, potentially draining onto the aft fairing heat shield and onto hot engine parts or brakes, which could lead to a major ground fire.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Actions

Within 60 months after the effective date of this AD: Do a general visual inspection for missing sealant in the seam on the outside and inside of the engine struts; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB570029–00, Issue 001, dated February 23, 2016. Do all applicable corrective actions before further flight.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(4)(i) and (h)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or sub-step is labeled "RC Exempt," then the RC requirement is removed from that step or sub-step. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

(1) For more information about this AD, contact Sherry Vevea, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425 917 6514; fax: 425 917 6590; email: *sherry.vevea@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 6, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22101 Filed 9–14–16; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 682

RIN 3084–AB41

Disposal of Consumer Report Information and Records

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: The Federal Trade Commission ("FTC" or "The Commission) requests public comment on its rule regarding Disposal of Consumer Report Information and Records ("Disposal Rule" or "Rule"). The Commission is soliciting comment as part of the FTC's systematic review of all current Commission regulations and guides.

DATES: Comments must be received on or before November 21, 2016.

ADDRESSES: Interested parties may file a comment online or on paper by following the Instructions for Submitting Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write "Disposal Rule, 16 CFR part 682, Project No. 165410" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/disposalrule* by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Disposal Rule, 16 CFR part 682, Project No. 165410" on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex H), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex H), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tiffany George, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3040.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair and Accurate Credit Transactions Act ("FACTA" or "Act") was enacted in 2003. In part, the Act amends the Fair Credit Reporting Act (''FCRA'') by imposing a requirement that any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose, properly dispose of any such information or compilation.[1] The Act also required the Commission and other federal agencies to promulgate rules regarding this requirement.[2] Further, the Act directed the Commission and other federal agencies to ensure that the rules were consistent with the requirements of the Gramm-Leach-Bliley Act (''GLBA'').[3]

Pursuant to the Act's directive, the Commission promulgated the Disposal Rule in 2004. The Disposal Rule provides that, unless otherwise stated, terms used in the Rule have the same meaning as set forth in the FCRA.[4] The Rule defines ''consumer information'' as any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.[5] In addition, ''dispose,'' ''disposing,'' or ''disposal'' is defined as (1) The discarding or abandonment of consumer information, or (2) The sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.[6]

The Disposal Rule requires that persons over which the FTC has jurisdiction who maintain or otherwise possess consumer information for a business purpose properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.[7] It also includes several examples of what the Commission believes constitute reasonable measures to protect consumer information in connection with its disposal.[8] These examples are intended to provide covered entities with guidance on how to comply with the Rule but are not intended to be safe harbors or exclusive methods for compliance.[9] The Rule uses a flexible ''reasonable measures'' standard. The FTC realizes that there are few foolproof methods of record destruction and that entities covered by the Rule must consider their own unique circumstances when determining how to comply with the Rule.

The Disposal Rule became effective on June 1, 2005.

II. Regulatory Review of the Disposal Rule

The Commission periodically reviews all of its rules and guides. These reviews seek information about the costs and benefits of the agency's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying those rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact and benefits of the Rule; possible conflict between the Rule and state, local, or other federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes.

III. Issues for Comment

The Commission requests written comment on any or all of the following questions. These questions are designed to assist the public and should not be construed as a limitation on the issues about which public comments may be submitted. The Commission requests that responses to its questions be as specific as possible, including a reference to the question being answered, and refer to empirical data or other evidence upon which the comment is based whenever available and appropriate.

A. General Issues

1. Is there a continuing need for specific provisions of the Rule? Why or why not?

2. What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

3. What modifications, if any, should be made to the Rule to increase its benefits to consumers?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the costs the Rule imposes on businesses, including small businesses?

4. What significant costs, if any, has the Rule imposed on consumers? What evidence supports the asserted costs?

5. What modifications, if any, should be made to the Rule to reduce any costs imposed on consumers?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the benefits provided by the Rule?

6. What benefits, if any, has the Rule provided to businesses, including small businesses? What evidence supports the asserted benefits?

7. What modifications, if any, should be made to the Rule to increase its benefits to businesses, including small businesses?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the costs the Rule imposes on businesses, including small businesses?

c. How would these modifications affect the benefits to consumers?

8. What significant costs, if any, including costs of compliance, has the Rule imposed on businesses, including small businesses? What evidence supports the asserted costs?

9. What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, including small businesses?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the benefits provided by the Rule?

10. What evidence is available concerning the degree of industry compliance with the Rule?

11. What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?

12. Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

a. What evidence supports the asserted conflicts?

b. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

B. Specific Issues

1. Should the Rule be modified to include more specific and prescriptive requirements for disposing of consumer information? Why or why not? If so, what requirements should be included and what sources should they be drawn from?

a. What evidence supports such a modification?

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[1] 15 U.S.C. 1681w.

[2] The other agencies are the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal banking agencies, and the National Credit Union Administration. *Id.*

[3] *Id.* The other agencies have incorporated the Disposal Rule requirements into their Safeguards rules and guidelines. *See* 12 CFR part 30, app. B (Office of the Comptroller of the Currency); 12 CFR part 208, app. D–2 and 12 CFR part 225, app. F (Board of Governors of the Federal Reserve System); 12 CFR part 364, app. B (Federal Deposit Insurance Corporation); 12 CFR part 748, app. A (National Credit Union Administration); 17 CFR 248.30 (Securities and Exchange Commission).

[4] 16 CFR 682.1(a).

[5] 16 CFR 682.1(b).

[6] 16 CFR 682.1(c).

[7] 16 CFR 682.2(b), 682.3(a).

[8] 16 CFR 682.3(b).

[9] *Id.*

b. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

c. How would this modification affect the benefits to consumers?

2. Should the Rule be modified to delete any of the existing examples or include additional examples to illustrate proper methods for disposing of consumer information? Why or why not? If so, what examples should be included and what sources should they be drawn from?

a. What evidence supports such a modification?

b. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

c. How would this modification affect the benefits to consumers?

3. Should the Rule be modified to reference or incorporate any other information destruction standards or frameworks? If so, which standards should be incorporated or referenced and how should they be referenced or incorporated by the Rule? Should such standards be considered safe harbors for compliance with the Rule?

a. What evidence supports such a modification?

b. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

c. How would this modification affect the benefits to consumers?

4. Under the current Disposal Rule, "Consumer information does not include information that does not identify individuals, such as aggregate information or blind data." Should the Rule be modified to change the definition of "consumer information"? Should the definition of "consumer information" include information that can be reasonably linked to an individual in light of changes in relevant technology or market practices? Should the Rule be modified to define "aggregate information" or "blind data"?

a. What evidence supports such a modification?

b. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

c. How would this modification affect the benefits to consumers?

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 21, 2016. Write "Disposal Rule, 16 CFR part 682, Project No. 165410" on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *https://www.ftc.gov/policy/public-comments.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as a Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or payment card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information.

In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/disposalrule* by following the instructions on the web-based form. If this document appears at *http://wwww.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write "Disposal Rule, 16 CFR part 682, Project No. 165410" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex H), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex H), Washington, DC 20024.

Visit the Commission Web site at *https://www.ftc.gov* to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 21, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–22198 Filed 9–14–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0777]

RIN 1625–AA08

Special Local Regulation; San Diego Sharkfest Swim; San Diego Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is temporarily changing the enforcement date and the location of the special local regulation for the annual San Diego Sharkfest Swim event held on the navigable waters of San Diego Bay, San Diego, CA. The change of enforcement date and the location for the special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in the waters of the San Diego Bay, California, from 9:00 a.m. to 10:00 a.m. on October 2, 2016, from Fifth Avenue Landing to Tidelands Park, Coronado, CA. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 22, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0777 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Robert Cole, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
TFR	Temporary Final Rule
LNM	Local Notice to Mariners
COTP	Captain of the Port
SMIB	Safety Marine Information Broadcast

II. Background, Purpose and Legal Basis

The San Diego Sharkfest Swim race is an annual recurring event listed in Table 1, Item 10 of 33 CFR 100.1101, Southern California Annual Marine Events for the San Diego COTP Zone. Special local regulations exist for the marine event to allow for special use of the San Diego Bay, San Diego, CA for this event. 33 U.S.C. 1233, authorizes the Coast Guard to establish and define special local regulations to promote the safety of life on the navigable waters during regattas or marine parades.

III. Discussion of Proposed Rule

The San Diego Sharkfest Swim race is an annual event normally held on a weekend day in September or October on the waters of San Diego Bay, San Diego, CA.

33 CFR 100.1101 lists the annual marine events and special local regulations in Southern California within the San Diego COTP Zone. The enforcement date and regulated location for this marine event are listed in Table 1, Item 10 of Section 100.1101.

The date listed in the Table indicates that the marine event will occur on a Saturday in September or October, on the waters of San Diego Bay, California, from Seaport Village to Coronado Ferry Landing. However, this proposed temporary rule will change the event date to Sunday, October 2, 2016, and the location from Fifth Avenue Landing to Tidelands Park, to reflect the actual date and location of the event.

The regulations in 33 CFR 100.1101 will be temporarily suspended for Table 1, Item 10 of that section and a temporary regulation will be inserted as Table 1, Item 19 of that section in order to reflect that the special local regulation will be effective and enforced from 9:00 a.m. to 10:00 a.m. on October 2, 2016. This change is needed to accommodate the sponsor's event plan and ensure that adequate regulations are in place to protect the safety of vessels and individuals that may be present in the regulated area. No other portion of Table 1 of § 100.1101 or other provisions in § 100.1101 shall be affected by this regulation.

The special local regulations are necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the San Diego Bay waterway. Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the proposed times. Before the effective period, the Coast Guard will publish information on the event in the weekly LNM. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analysis

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Optional waterway routes exist to allow boaters to travel around the marine event area, without impacting the race, once the last swimmer has cleared the middle of the channel. Moreover, the Coast Guard would publish a Local Notice to Mariners about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of the San Diego Bay, San Diego, CA, from 9:00 a.m. to 10:00 a.m. on October 2, 2016.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: Traffic will be allowed to pass around the regulated area once the last swimmer has cleared the middle of the channel with the permission of the COTP, or his designated representative, and the special local regulation is limited in size and duration. Before the effective period, the Coast Guard will publish event information on the Internet in the weekly LNM marine information report, as well as provide a SMIB via marine radio during the event. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishment of marine event special local regulations on the navigable waters of the San Diego Bay. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.1101, in Table 1 to § 100.1101, suspend item "10" and add temporary item "19" to read as follows:

§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.

* * * * *

(b) * * *

(5) * * *

TABLE 1 TO § 100.1101

[* * *]

* * * * * * *

19. San Diego Sharkfest Swim

Sponsor	Enviro-Sports Productions, Inc.
Event Description	Swim Race.
Date	October 2, 2016.
Location	San Diego Bay, CA.

TABLE 1 TO § 100.1101—Continued

[* * *]

Regulated Area	The waters of San Diego Bay, CA from Fifth Avenue Landing to Tidelands Park, Coronado, CA.

Dated: September 1, 2016.

J.R. Buzzella,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2016–22227 Filed 9–14–16; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 204

[Docket No. 2016–7]

Removal of Personally Identifiable Information From Registration Records

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Copyright Office ("Office") is proposing new rules related to personally identifiable information ("PII") that may be found in the Office's registration records. First, the proposed rule will allow an author, claimant of record, or the authorized agent of the author or claimant of record, to request the removal of certain PII that is requested by the Office and collected on a registration application, such as home addresses or personal phone numbers, from the Office's internet-accessible public catalog, while retaining it in the Office's offline records as required by law. Second, the proposed rule will codify an existing practice regarding extraneous PII that applicants erroneously include on registration applications even though the Office has not requested it, such as driver's license numbers, social security numbers, banking information, and credit card information. Under the proposed rule, the Office would, upon request, remove such extraneous PII both from the Office's internet-accessible public catalog and its offline records.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on October 17, 2016.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/rulemaking/pii/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Cindy Abramson, Assistant General Counsel, by email at *ciab@loc.gov,* or Abioye Mosheim, Attorney Advisor, by email at *abmo@loc.gov.* Each can be contacted by telephone by calling 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule would create procedures to request removal of certain "personally identifiable information" ("PII") from the Office's registration records. PII is generally considered to be any information that has the potential to identify a specific individual. The proposed rule concerns two distinct categories of PII as discussed below.

The Office requests and receives certain types of PII during the registration process (*e.g.,* dates of birth, addresses, telephone numbers, fax numbers, and email addresses). The collection of some of that information is mandated by statute or regulation; other information is optional.[1] This information is referred to herein as "requested PII."

The Office does not request, but sometimes receives, additional PII when applicants choose to include information such as driver's license numbers, social security numbers, banking information, and credit card information on their registration applications. Such information is extraneous and unnecessary for the processing and maintenance of copyright registration records. This information is referred to herein as "extraneous PII."

As explained below, this proposed rule would treat these two categories of PII differently.

With respect to requested PII—information that the Copyright Office purposely collects as part of registration—the Copyright Act imposes certain obligations on the Office to preserve that information as part of the public record. The Act requires the Register to ensure that "records of . . . registrations . . . are maintained, and that indexes of such records are prepared," and that "[s]uch records and indexes . . . be open to public inspection," thus creating a public record. 17 U.S.C. 705(a), 705(b). The public record of copyright registrations serves several important functions. Chief among these is that the record provides essential facts relevant to the copyright claim and information that a potential user of a copyrighted work can use to locate the work's owner. The registration record can also be a valuable aid for determining the term of copyright protection, by providing information such as the author's date of death, the publication date for the work, or the year of creation of the work.

A separate provision of the Act requires the Register of Copyrights to "compile and publish . . . catalogs of all copyright registrations." 17 U.S.C. 707(a). For most of the Office's history, this catalog was maintained in paper form as the Catalog of Copyright Entries ("CCE"). Starting in 1994, however, the Office began providing the public with access to a computerized database of post-1977 copyright registration and recordation catalog entries via the internet. Then, in 1996, the Office decided to end publication of the printed CCE and publish copyright registration information solely via an online public catalog. *See* 61 FR 52465 (Oct. 7, 1996).

Initially, the PII revealed in the online public catalog was limited to names and, when volunteered, the author's year of birth. By 2007, however, with the advent of the Copyright Office's online registration system ("eCO"), a broader range of PII was pushed from the Office's registration records into the online public catalog, including the postal address of the claimant, and the name, postal address, email address and phone number of the person authorized to correspond about, and/or provide rights and permission to use, the registered work. *See* 72 FR 36883, 36887 (July 6, 2007). The current online public catalog, however, does not contain all of the information that is contained in the Office's full registration records. For instance, the online public catalog currently does not include the text of correspondence between the Office and the applicant. This information is maintained solely in the Office's offline records, although members of the public can obtain copies of it by making a request to the Office.

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[1] The Copyright Act requires the Office to gather the name and address of the copyright claimant; the name of the author(s), for works that are not anonymous or pseudonymous; the nationality or domicile of the author(s); and the date(s) of death for deceased author(s). *See* 17 U.S.C. 409. The Act also gives the Register of Copyrights the authority to require applicants to supply any other information "bearing upon the preparation or identification of the work or the existence, ownership, or duration of copyright." *Id.*

In addition, while the information in the online public catalog initially could only be searched and retrieved via the Office's Web site, in 2007 third parties began harvesting registration information, including PII, from the catalog, and posting that information on alternative Web sites, which were then indexed by search engines. As a result, authors and claimants began noticing their personal information appearing in internet search results, and began asking the Office to remove that information from the Office's online public catalog.

In 2008, the Office published a list of frequently asked questions ("FAQs") on privacy to address some of these concerns.[2] In the FAQs, the Office stressed that, by statute, it was required to collect certain information as part of the registration application and maintain it as part of its public records. The FAQs advised the public that if they did not wish sensitive personal information to appear in the online public catalog, they should refrain from providing it during the registration process, if possible. Applicants were advised to instead consider providing non-personal information, such as information about a third-party agent, a post office box, or a non-personal email address. But the Office warned that, if the applicant provided personal information, it would be included in the online public catalog. Both the Web page to log in to the online registration system and the Web page to download paper application forms include links to the privacy FAQs. *See* eCO Registration System, Privacy: Copyright Public Records, *http://www.copyright.gov/eco/*; Forms, *http://www.copyright.gov/forms/*; *see also* U.S. Copyright Office, Compendium of U.S. Copyright Office Practices 205 (3d ed. 2014).

The Office's practices have differed with respect to extraneous PII—such as driver's license numbers, social security numbers, credit card information, and banking information—that applicants sometimes include on registration applications, even though the application does not require or request such information. Given the particular sensitivity of that information, and the fact that it is not requested as part of the registration application, the Office has developed an informal practice of removing extraneous PII from its registration records, including the online public catalog and the offline records, for no fee. During the registration process, the Office may remove extraneous PII, particularly if it is sensitive information, on its own volition. After the registration is complete, the Office will remove extraneous PII upon request. *See* Compendium (Third) 1804.2 ("If the registration specialist discovers a social security number, driver's license number, credit card number, or bank account number in the application, he or she will remove that information from the record without communicating with the applicant [and] [i]f this information is not discovered during the examination process . . . [t]he Office will remove [it] upon written request.").

II. Discussion

Since issuing its FAQs on privacy in 2008, the Office has continued to receive occasional requests to remove PII that the Office regularly collects as part of the registration application, such as home addresses, from the online registration records. In light of these requests, the Office is now proposing to amend its rules in two main respects.

First, as explained in detail below, the Office proposes to add a new rule allowing authors and claimants to request the removal of requested PII from the online public catalog only, and replace it with non-personal information. The original information would be maintained in the Office's offline records and would be available for public inspection by visitors to the Copyright Office and upon request, consistent with the Office's statutory responsibilities to "maintain" such records and make them available to the public. 17 U.S.C. 705(a), 705(b). In proposing the rule, the Office seeks to strike an appropriate balance between the public's interest in a robust online record and concerns of privacy and safety in individual cases.

Second, the proposed rule would codify the Office's existing practice of removing extraneous PII—such as driver's license numbers, social security numbers, banking information, and credit card information—from both the offline records and the online public catalog. The Office is also proposing a conforming amendment to its Privacy Act regulations.

A. Removal of Requested PII From the Online Public Catalog

Who may request removal. The proposed rule would permit an author, claimant of record, or the authorized representative of the author or claimant of record, to submit a request to remove certain PII related to a copyright registration from the Copyright Office's online registration records.

What may be removed. In general, the proposed rule would allow for the removal of requested PII contained in the online public catalog, including home addresses, personal telephone and fax numbers, and personal email addresses. But there are two important limitations. First, the proposed rule would not allow a claimant to eliminate address information from the online public catalog, but instead would only allow for the replacement of a home address with a verifiable substitute address, such as a current post office box or third-party address (*e.g.,* "in care of" an agent or corporation). The reason for this restriction is that allowing the wholesale removal of a claimant address would impede the public's ability to contact a copyright owner to obtain permission to use the work.

Second, the proposed rule would not permit removal of an author or claimant's name from the online public catalog, or the replacement of an author or claimant's name with a pseudonym or an "anonymous" designation. Changing or removing a name is not necessary to prevent privacy invasions, as long as associated PII is removed. More fundamentally, allowing authors or claimants to alter their names in the online public catalog may lead to confusion regarding the term of copyright protection for the work. Under the Copyright Act, works by anonymous and pseudonymous authors have different terms of copyright protection than works by authors whose real name is revealed in the Office's records. The term for works by anonymous and pseudonymous authors is 95 years following the year of first publication, or 120 years following the year of creation, whichever term expires first. The term for works by authors whose real names are revealed in the Office's records is the life of the author plus 70 years. 17 U.S.C. 302(a), 302(c). In addition, the Act specifically contemplates that if the real name of the author of an anonymous or pseudonymous work is identified in the Office's records during the term of protection, then that work will receive the term of life plus 70 years. *Id.* at 302(c). But the statute does not provide for the reverse: It does not contemplate a work whose author is already known receiving the copyright term applicable to works by anonymous or pseudonymous authors if the author's real name is removed from the Office's records. Thus, if the proposed rule were to permit the removal of an author's real name from the online public catalog, or the substitution of a real name with a pseudonym, it would run contrary to the statutory scheme established by Congress, and would likely create confusion regarding the correct term of copyright.

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[2] *See* U.S. Copyright Office, *Privacy: Copyright Public Records, http://www.copyright.gov/help/faq/faq-privacy.html.*

Moreover, in at least some situations, removal of a *claimant's* name could also lead to confusion about the correct copyright term. For example, an anonymous author might inadvertently reveal his or her real name in the claimant section of the registration form, in which case it may be that the term for a known author applies, rather than the term for an anonymous or pseudonymous author.[3] Although that concern may arise only in rare cases, any rule would have to account for this possibility and would, as a result, be difficult to administer. Accordingly, in light of the limited privacy concerns regarding the publication of author and claimant names unconnected to other forms of PII, and consistent with existing practices, the Office has provisionally concluded that the rule should not allow removal of author or claimant names from the online public catalog. *See* Compendium (Third) 615.3 ("The Office will not remove the author's name from the registration record once a certificate of registration has been issued.").

Standard for removal of requested PII. Under the proposed rule, the standard the Office would employ in determining whether to grant a request to remove requested PII from the online public catalog will depend on whether the requester is asking simply to replace the PII in the online public catalog with verifiable, non-personally-identifiable substitute information, or whether the requester instead is asking to remove the PII without providing such substitute information.

If the requester provides the Office with verifiable, non-personally-identifiable substitute information, the Office would generally grant the request, unless it determines that the need to maintain the original information in the public record substantially outweighs the safety, privacy, or other stated concern.

By contrast, if the requester is not providing verifiable, non-personally-identifiable substitute information, the request will only be granted if the requester demonstrates that the safety, privacy, or other stated concern substantially outweighs the need for the information to remain in the public record. This higher standard is warranted because removing information entirely from the online public catalog would result in a diminished record available for search via the internet.

To satisfy the higher standard, a requester must provide more than a bare declaration that the author or claimant is concerned about his or her privacy or safety. For instance, a general statement such as, "I want to protect my privacy," will not satisfy this requirement. Rather, a detailed explanation of why the request should be granted is required, such as a specific threat to safety or privacy. The more detail that is supplied by the requester, the more likely the Office is to accept the assertion on its face.

How to submit a request for removal of requested PII. PII removal requests must be in the form of a signed affidavit mailed to the U.S. Copyright Office's Associate Register of Copyrights and Director of Public Information and Education, and contain the following information:

- The copyright registration number(s). (A single affidavit may request removal of the same PII in multiple registration records, but as explained below, the $130 fee must be paid for each registration record.)
- The name of the author and/or claimant of record on whose behalf the request is made.
- Identification of the specific PII that is to be removed.
- If applicable, verifiable, non-personally-identifiable substitute information that should replace the PII to be removed.
- A statement providing the reasons supporting the request. If the requester is not providing verifiable, non-personally-identifiable substitute information to replace the PII to be removed, this statement must explain in detail the specific threat to personal safety or personal security, or other circumstances, supporting the request.
- The statement, "I declare under penalty of perjury that the foregoing is true and correct."
- If the submission is by an authorized representative of the author or claimant of record, an additional statement, "I am authorized to make this request on behalf of [name of author or claimant of record]."
- The signature of the author, claimant of record, or the authorized representative of the author or claimant of record.
- The date on which the request was signed.
- A physical mailing address to which the Office's response may be sent (if no email address is provided).
- A telephone number.
- An email address (if available).

Requests to remove requested PII made by joint authors and claimants. Requests by a joint author or claimant will generally be treated as described above for a single author or claimant. In other words, a joint author or claimant may request removal of their own PII (though, obviously, not the removal of PII of their co-author or co-claimant). That having been said, the Office has some concern regarding joint authors or claimants that may initially have matching PII, such as a married couple or business partners that share office space. If such relationships were to dissolve, this rule could theoretically permit a joint author or claimant to remove critical contact information for the other author or claimant from the record. Based on this concern, the Office intends to review these requests on a case-by-case basis, but invites comments on this issue. Comments with specific examples or hypotheticals are preferred to general statements.

Review process. All written requests for the removal of requested PII from the online public catalog will be reviewed by the Associate Register of Copyrights and Director of the Office Public Information and Education, or his or her designee(s). All decisions granting or denying requests for the removal of requested PII from the online public catalog will be sent in writing to the author, claimant of record, or the authorized representative of the author or claimant of record at the address or email indicated in the request.

If the request is granted, the Office will act as expeditiously as possible to effectuate it. However, when a request to remove requested PII is denied, authorized persons may submit one request for reconsideration in writing and by mail, to the Office of the General Counsel within thirty (30) days from the date of the denial letter, along with the required fee.

Effect on the public record. When requests for the removal of requested PII are granted, the alteration will *only* be made in the online public catalog. A copy of the original registration record containing the PII will be kept on file in the Office away from public online view. A new certificate of registration reflecting the change will be issued. A note will be added to the basic registration record and made viewable in the online public catalog indicating the modification to the catalog. The note will contain a statement, such as "*Online record modified in response to PII request effective [date modified]."

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[3] One possible clue that the anonymous or pseudonymous author and the person listed in the claimant section are the same person might be if the "transfer" section of the registration form is left blank. Where the author and claimant are different people, the transfer section must indicate how the claimant came to obtain the copyright from the author. 17 U.S.C. 409(5).

As noted, the Office will not alter the original registration record, but will instead maintain it in its offline records. Members of the public would be able to access the original, unaltered records by visiting the Office in Washington, DC, and inspecting the offline records there. Members of the public would also, for a fee, be able to request reproductions of original registration records through the Office's Records, Research and Certification Section.

Although the Office contemplated allowing the removal of requested PII from its offline registration records as well its online public catalog, it has preliminarily concluded that the Copyright Act limits its authority to do so. Section 409 of the Copyright Act requires the Office to collect certain information on registration applications, and section 705 requires the Office to "maintain" records of those registrations, and make them available for public inspection. To allow parties to alter the original records and render the original information wholly unavailable for public inspection would appear to be contrary to this statutory mandate. The Act does not, however, mandate that copyright registrations records be published in full on the internet. Rather, the Office's online public catalog is principally a fulfillment of the statutory mandate in 17 U.S.C. 707 that the Office compile and publish catalogs of all copyright registrations. Section 707 gives the Office the discretion to determine "on the basis of practicability and usefulness" the form (and frequency) of the information that is published in these catalogs. The legislative history on section 707(a) contemplates a move from paper-based to electronic distribution of the catalog information:

> Section 707(a) of the bill retains the present statute's basic requirement that the Register compile and publish catalogs of all copyright registrations at periodic intervals, but provides "discretion to determine, on the basis of practicability and usefulness, for the form and frequency of publication of each particular part." This provision will in no way diminish the utility or value of the present catalogs, and the flexibility of approach, coupled with use of the new mechanical and electronic devices now becoming available, will avoid waste and result in a better product.

See H.R. Rep. No. 1476, 94th Cong., 2d Sess. 172 (1976).

Though the proposed rule's approach would still allow access to PII through offline means, we believe that preventing the online dissemination of that information will substantially alleviate privacy concerns. Access to the Office's offline records is limited, as described above. In contrast, information in the online public catalog is accessible for free at any time by anyone with an internet connection and can also be harvested through automatic processes.[4]

Fees. Section 708(a) of title 17 authorizes the Register to fix fees for services, other than those enumerated in paragraphs (a)(1) through (9) of § 708(a), based on cost and without prior submission to Congress.[5] *See* 17 U.S.C. 708(a). Fees for Office services that the Register has the discretion to establish based on cost and without Congressional review include fees for copying Office records, fees for mail and delivery services, and fees for special handling. *See* 79 FR 15910, 15916–17 (Mar. 24, 2014). With the rule proposed herein, the Office seeks to adopt new fees to recover costs associated with two new services: First, the process of considering initial requests for removal of PII from the online public catalog, and second, the process of reconsideration of denied requests.

Based on a cost analysis, the Office believes that the fee for the initial request should each be established at $130 per registration record, and the fee for reconsideration of denied requests should be established at a flat $60 regardless of the number of registration records encompassed by the request for reconsideration.

The Office arrived at the $130 fee for initial requests by considering the time and labor required to review and process these requests, including the salaries of junior and senior staff who will take part in the review, draft the decisions, and perform the data entry; costs associated with docketing and responding to requests via U.S. mail; system costs related to entering changes into the online public catalog as well as updating the offline registration records; and costs associated with printing a new registration certificate. For example, for initial requests, senior Public Information and Education staff must review the initial requests, draft final decisions, then the Associate Register of Copyrights and Director of the Office of Public Information and Education must review and sign final decisions. When an initial request is granted, Registration Program staff must key the changes into the Office's online public catalog, and perform checks to ensure that the changes are accurately reflected in the online public catalog. For both initial requests and requests for reconsideration, the costs associated with processing the check or money order payments by the Office's accounting staff have been factored into the fee.

For reconsiderations, the costs associated with having an attorney advisor review the reconsideration letters and draft final decisions for review by and signature of the General Counsel and Associate Register of Copyrights amount to a flat fee of $60 per request, regardless of the number of registration records referenced in the request. If the Office grants the request for reconsideration, the costs associated with keying changes into the system and printing a new certificate would have already been covered by the fee that accompanied the initial request, and so they are not included in this fee.

Both fees are non-refundable.

B. Removal of Extraneous PII From Online and Offline Registration Records

As explained, the proposed rule would also codify the Office's existing practice of removing extraneous PII such as driver's license numbers, social security numbers, banking information and credit card information from the Office's online and offline records upon request. *See* Compendium (Third) 1804.2. Specifically, the proposed rule would allow, through a request made in writing (via hard copy or email) to the Associate Register of Copyrights and Director of the Office of Public Information and Education, the removal of extraneous PII such as driver's license numbers, social security numbers, banking information, and credit card information inadvertently included on a copyright registration application, at no cost. Such a request must contain the name of the author and/or claimant of record, the registration number associated with the record, and a description of the extraneous PII that is to be removed. Once the Office receives the request it will act as expeditiously as possible to remove the extraneous PII from both its online and offline public records. The Office will not include any notation of this action in its records. The Office will also continue its informal practice of affirmatively removing or redacting extraneous PII from registration forms if it is found during and following the examination process, although this practice is not codified in the proposed rule.

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[4] Nonetheless, the Office reiterates that the best way to keep PII from being included in the public record is to avoid providing it in a registration application when possible. In addition, this rule does not, and cannot, prevent third-party Web sites from collecting previously posted PII and making the information available online, even after the PII is removed from the Office's online public catalog.

[5] Fees for core Office services such as registration of a claim, recording a transfer of copyright ownership or other document, issuance of a certificate of registration, and certain other services are to be submitted by the Register to Congress before they take effect. *See* 17 U.S.C. 708(a) and (b).

List of Subjects in 37 CFR Parts 201 and 204

Copyright, Information, Privacy, Records.

Proposed Regulations

For the reasons set forth in the preamble, the U.S. Copyright Office proposes to amend parts 201 and 204 of 37 CFR chapter II as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read, in part, as follows:

Authority: 17 U.S.C. 702.

■ 2. In paragraph § 201.1, revise the section heading and add paragraph (c)(8) to read as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(c) * * *

(8) *Requests to remove PII from registration records.* Requests to remove personally identifiable information from registration records pursuant to sections 201.2(e) and 201.2(f) should be addressed to: U.S. Copyright Office, Associate Register of Copyrights and Director of the Office of Public Information and Education, P.O. Box 70400, Washington, DC 20024–0400. Requests should be clearly labeled "Request to Remove Requested PII," "Request for Reconsideration Following Denial of Request to Remove Requested PII," or "Request to Remove Extraneous PII," as appropriate.

■ 3. In § 201.2, add paragraphs (e) and (f) to read as follows:

§ 201.2 Information given by the Copyright Office.

* * * * *

(e) *Requests for removal of requested personally identifiable information from the online public catalog.* (1) In general, an author, claimant of record, or the authorized representative of the author or claimant of record may submit a request to remove certain requested personally identifiable information ("PII") related to a copyright registration from the Copyright Office's online public catalog by following the procedure set forth in paragraph (e)(3) of this section. Where the requester provides verifiable, non-personally-identifiable substitute information to replace the PII being removed, the Office will grant the request unless it determines that the need to maintain the original information in the public record substantially outweighs the safety, privacy, or other stated concern. If the requester does not provide verifiable, non-personally-identifiable substitute information, the Office will grant the request only if the safety, privacy, or other stated concern substantially outweighs the need for the information to remain in the public record. The Office will review requests by joint authors or claimants on a case-by-case basis.

(2) Categories of personally identifiable information that may be removed from the online public catalog include home addresses, personal telephone and fax numbers, and personal email addresses, except that:

(i) Requests for removal of driver's license numbers, social security numbers, banking information, credit card information and other extraneous PII covered by paragraph (f) of this section are governed by the provisions of that paragraph.

(ii) Requests to remove the address of a copyright claimant must be accompanied by a verifiable substitute address.

(iii) Names of authors or claimants may not be removed or replaced with a pseudonym.

(3) Requests for removal of PII from the online catalog must be in the form of an affidavit, must be accompanied by the non-refundable fee listed in § 201.3(c), and must include the following information:

(i) The copyright registration number(s).

(ii) The name of the author and/or claimant of record on whose behalf the request is made.

(iii) Identification of the specific PII that is to be removed.

(iv) If applicable, verifiable non-personally-identifiable substitute information that should replace the PII to be removed.

(v) A statement providing the reasons supporting the request. If the requester is not providing verifiable, non-personally-identifiable substitute information to replace the PII to be removed, this statement must explain in detail the specific threat to the individual's personal safety or personal security, or other circumstances, supporting the request.

(vi) The statement, "I declare under penalty of perjury that the foregoing is true and correct."

(vii) If the submission is by an authorized representative of the author or claimant of record, an additional statement, "I am authorized to make this request on behalf of [name of author or claimant of record]."

(viii) The signature of the author, claimant of record, or the authorized representative of the author or claimant of record.

(ix) The date on which the request was signed.

(x) A physical mailing address to which the Office's response may be sent (if no email is provided).

(xi) A telephone number.

(xii) An email address (if available).

(4) Requests under this paragraph (e) must be mailed to the address listed in § 201.1(c).

(5) A properly submitted request will be reviewed by the Associate Register of Copyrights and Director of the Office Public Information and Education or his or her designee(s) to determine whether the request should be granted or denied. The Office will mail its decision to either grant or deny the request to the address indicated in the request.

(6) If the request is granted, the Office will remove the information from the online public catalog. Where substitute information has been provided, the Office will add that information to the online public catalog. In addition, a note indicating that the online record has been modified will be added to the online registration record. A new certificate of registration will be issued that reflects the modified information. The Office will maintain a copy of the original registration record on file in the Copyright Office, and such records shall be open to public inspection and copying pursuant to paragraphs (b), (c), and (d) of this section. The Office will also maintain in its offline records the correspondence related to the request to remove PII.

(7) Requests for reconsideration of denied requests to remove PII from the online public catalog must be made in writing within 30 days from the date of the denial letter. The request for reconsideration, and a non-refundable fee in the amount specified in § 201.3(c), must be mailed to the address listed in § 201.1(c). The request must specifically address the grounds for denial of the initial request. Only one request for reconsideration will be considered per denial.

(f) *Requests for removal of extraneous PII from the public record.* Upon written request, the Office will remove driver's license numbers, social security numbers, banking information, credit card information, and other extraneous PII that was erroneously included on a registration application from the public record. There is no fee for this service. To make a request, the author, claimant, or the authorized representative of the author or claimant, must submit the request in writing to the email address or mailing address listed in § 201.1(c). Such a request must name the author and/or claimant, provide the registration number(s) associated for the record in question, and give a description of the extraneous PII that is to be removed. Once the request is received, the Office will remove the extraneous information from both its online and offline public records. The Office will not include any notation of this action in its records.

■ 4. In § 201.3, add paragraph (c)(19) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

Registration, recordation and related services	Fees ($)
* * * * * * *	
(19) Removal of PII from Registration Records:	
(i) Initial request, per registration record	130
(ii) Reconsideration of denied requests, flat fee	60
* * * * * * *	

* * * * *

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

■ 5. The authority citation for part 204 continues to read as follows:

Authority: 17 U.S.C. 702; 5 U.S.C. 552(a).

■ 6. Revise § 204.7 to read as follows:

§ 204.7 Request for correction or amendment of records.

(a) Any individual may request the correction or amendment of a record pertaining to her or him. Requests for the removal of requested personally identifiable information related to a copyright registration are governed by § 201.2(e) of this chapter. Requests for the removal of extraneous personally identifiable information, such as driver's license numbers, social security numbers, banking information, and credit card information from registration records are governed by § 201.2(f) of this chapter. With respect to the correction or amendment of all other information contained in a copyright registration, the set of procedures and related fees are governed by 17 U.S.C. 408(d) and § 201.5 of this chapter. With respect to requests to amend any other record that an individual believes is incomplete, inaccurate, irrelevant or untimely, the request shall be in writing and delivered either by mail addressed to the U.S. Copyright Office, Supervisory Copyright Information Specialist, Copyright Information Section, Attn: Privacy Act Request, P.O. Box 70400, Washington, DC 20024–0400, or in person Monday through Friday between the hours of 8:30 a.m. and 5 p.m., eastern time, except legal holidays, at Room LM–401, Library of Congress, U.S. Copyright Office, 101 Independence Avenue SE., Washington, DC 20559–6000. The request shall explain why the individual believes the record to be incomplete, inaccurate, irrelevant, or untimely.

(b) With respect to requests for the correction or amendment of records that are governed by this section, the Office will respond within 10 working days indicating to the requester that the requested correction or amendment has been made or that it has been refused. If the requested correction or amendment is refused, the Office's response will indicate the reason for the refusal and the procedure available to the individual to appeal the refusal.

Dated: September 8, 2016.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2016–22011 Filed 9–14–16; 8:45 am]

BILLING CODE 1410–30–P

POSTAL REGULATORY COMMISSION

39 CFR Parts 3015 and 3060

[Docket No. RM2016–13]

Changes to Attributable Costing

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is issuing this proposed rulemaking which amends some existing rules concerning attributable costing. The primary purpose of this rulemaking is to make conforming changes to rules that specifically define or describe attributable costs, pursuant to Commission Order No. 3506. This notice informs the public of the docket's initiation, invites public comment, and takes other administrative steps.

DATES: Comments are due on or before October 17, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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II. Background
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I. Introduction

The Commission initiates this rulemaking to request comments on proposed changes to title 39 of the Code of Federal Regulations (CFR) as they relate to attributable costs. The primary purpose of the rulemaking is to make conforming changes to rules that specifically define or describe attributable costs, pursuant to Commission Order No. 3506.[1]

II. Background

In Docket No. RM2016–2, the Commission issued Order No. 3506 after consideration of a United Parcel Service, Inc. (UPS) Petition which sought to make changes to the methodologies employed by the Postal Service to account for the costs of its products in its periodic reports.[2] In Proposal One, UPS recommended that the Postal Service calculate and attribute inframarginal costs to individual products in addition to the currently attributed volume-variable and product-specific fixed costs.[3]

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[1] Docket No. RM2016–2, Order Concerning United Parcel Service, Inc.'s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016 (Order No. 3506).

Section 3633(a)(2) (competitive rate regulation) requires the Commission to ensure that "each competitive product covers its costs attributable." 39 U.S.C. 3633(a)(2); *see also* 39 CFR 3015.7(b).[4] Section 3631(b) defines attributable cost as "the direct and indirect postal costs attributable to [ ] product[s] through reliably identified causal relationships." 39 U.S.C. 3631(b).

Additionally, under section 3622 (market dominant rate and class regulation), a product's ability to cover its attributable costs is a factor to be considered when regulating rates for market dominant products and includes the same terminology, that postal costs should be attributed through reliably identified causal relationships, found in sections 3631(b). 39 U.S.C. 3622(c)(2).

Therefore, title 39 introduces the concept of attributable costs and describes the role they play in the regulation of both market dominant and competitive products. For competitive products, coverage of attributable costs is a requirement in regulating competitive product rates; for market dominant products, it is only one of many factors the Commission considers when regulating market dominant rates. *See* 39 U.S.C. 3633(a)(2); 39 CFR 3015.7(b); 39 U.S.C. 3622(c).

Historically, volume-variable costs and product-specific costs together totaled attributable costs, as the Commission found both volume-variable and product-specific costs are reliably identifiable and causally related to products pursuant to statute.[5] All other costs are currently classified as institutional and are not attributed to specific products. Order No. 3506 at 10. Institutional costs include common fixed costs and inframarginal costs. *Id.* Inframarginal costs are variable costs that do not vary *directly* with volume. *Id. (emphasis added).*

While the Commission found that inframarginal costs are causally related to products, it determined inframarginal costs cannot be reliably identified, which is a necessary component of cost attribution. Order No. 3506 at 56. However, the Commission found that a portion of inframarginal costs (those inframarginal costs calculated as part of a product's incremental cost) are reliably identifiable and can be linked to products. Order No. 3506 at 61. Therefore, pursuant to Order No. 3506, attributable costs must also include those inframarginal costs calculated as part of a competitive product's incremental costs (in addition to a product's volume-variable costs and product-specific fixed costs). It is this change in the description of attributable costs that requires clarification of some attributable cost references in title 39 of the CFR.

III. Proposed Rules

The rules requiring conforming or clarifying changes in this notice of proposed rulemaking are §§ 3015.7, 3060.10, and 3060.21.

Proposed § 3015.7(a) provides that when incremental cost data are unavailable to test for cross-subsidies by market dominant products, the Commission will use volume-variable costs and product-specific costs, as well as causally related, group-specific costs, to test for cross-subsidies. This proposed section removes the "attributable costs" phrase currently described as the alternative test when incremental costs are not available. The proposed rule is intended to provide a refined explanation of the alternative test for cross-subsidization by market dominant products after the Commission found in Order No. 3506 that some incremental costs (those inframarginal costs calculated as part of a competitive product's incremental costs) should be included as part of attributable costs. Order No. 3506 at 61–62, 123–124.

Proposed § 3015.7(b) includes the updated description of attributable costs to include those inframarginal costs calculated as part of a competitive product's incremental costs, as well as volume-variable costs and product-specific costs. Order No. 3506 at 62. The proposed rule is intended to provide a clear description of which costs should be attributed to competitive products pursuant to the Commission's findings in Order No. 3506. In addition, proposed rule § 3015.7(b) signifies these three costs not only comply with the description of attributable costs found in 39 U.S.C. 3631(b), but are the costs relevant to the Commission's evaluation of the Postal Service's compliance with part 3015.

Proposed §§ 3060.10(a) and 3060.21 both make conforming changes to the description of attributable costs, in each section, to include those inframarginal costs calculated as part of a competitive product's incremental costs, along with volume-variable costs and product-specific costs pursuant to Order No. 3506.

While no other rules in title 39 require revisions as a result of the

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[2] Docket No. RM2016–2, Petition of United Parcel Service, Inc. for the Initiation of Proceedings to Make Changes to Postal Service Costing Methodologies, October 8, 2015 (Petition).

[3] Petition, Proposal One at 1. Proposal Two dealt with reclassifying some fixed costs as fully or partially variable, and attributing those costs to products. *See generally,* Petition, Proposal Two at 1. UPS also filed a third proposal, which requested review of competitive products; share of institutional costs. Petition, Proposal Three at 1. In Order No. 2793, the Commission held consideration of Proposal Three in abeyance until the Commission completed its review of Proposals One and Two. Docket No. RM2016–2, Notice of Proposed Rulemaking on United Parcel Service, Inc.'s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), October 29, 2015, at 6–7 (Order No. 2793). It is the Commission's decision concerning Proposal One that initiated this proposed rulemaking.

[4] This Notice of Proposed Rulemaking sets forth amendments to 39 CFR part 3015, which implements 39 U.S.C. 3633. These proposed rules are conforming changes required by the Commission's action taken on the UPS Petition. *See* Order No. 3506 at 61–62, 123–124. (Adopting the use of incremental costs to calculate attributable cost). Uncodified section 703 of the Postal Accountability and Enhancement Act, Public Law 109–435, 120 Stat. 3198 (2006) requires that when promulgating new or revised regulations under section 3633, the Commission "shall take into account" Federal Trade Commission recommendations about the net economic effects of laws that apply to the United States Postal Service, and subsequent relevant events.

However, the proposed rules in this instance do not trigger the requirement to consider the net economic effect because the rules are a conforming change required by law. Section 3622(c) requires that costs must be attributed when there is a reliably identified causal relationship that links costs to a class or type of mail service. *See* 39 U.S.C. 3622(c). In Order No. 3506, the Commission found that there were additional costs that satisfied the requirements of section 3622(c), and, therefore, must be attributed. *See* Order No. 3506 at 61–62. Pursuant to section 3622(c), these costs must therefore be attributed to all products, including competitive products. This change in attribution requires conforming changes in 39 CFR part 3015 that are identified in this Notice. Because the rule changes are required by law, any consideration of the "net economic effect" recommendations identified in uncodified section 703 would be moot. Additionally, the Commission discusses the inapplicability of uncodified section 703 to UPS Proposals One and Two in Order No. 3506. Order No. 3506 at 117–120.

The Commission notes, notwithstanding uncodified section 703's applicability, that this change in attribution results in an improved, more complete, or more accurate measure of attributable costs as defined by section 3622(c), and represents an improvement in the attribution of costs as required by section 3652(e). *See* Order No. 3506 at 122 n.152. The conforming changes identified in this Notice facilitate improved attribution and therefore reduce potential economic distortions.

[5] Docket No. R74–1, Chief Administrative Law Judge's Initial Decision on Postal Rate and Fee Increases Volume I, May 28, 1975, at 76. *See generally* at *id.* at 76–145; *see also* Summary Description of USPS Development of Costs by Segments and Components, Fiscal Year 2015, July 6, 2016, "PREF–15" at i; Appendix H, at H–1; Docket No. R83–1, Opinion and Recommended Decision on E–COM Rate and Classification Changes, February 24, 1984, at 186.

Commission's Order No. 3506, the Commission's findings concerning the use a product's incremental costs (the sum of volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a product's incremental costs) to calculate attributable costs applies to any reference of attributable costs in title 39 unless otherwise indicated by the rules. *See generally* Order No. 3506.

IV. Comments Requested

Interested persons are invited to provide written comments concerning the proposed rule. Comments are due no later than 30 days after the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, *http://www.prc.gov.*

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

V. Ordering Paragraphs

It is ordered:

1. Docket No. RM2016–13 is established for the purpose of receiving comments on the proposed change to parts 3015 and 3060, as discussed in this order.

2. Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the **Federal Register**.

3. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as the Public Representative in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

List of Subjects

39 CFR Part 3015

Administrative practice and procedure, Postal Service.

39 CFR Part 3060

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

■ 1. The authority citation of part 3015 continues to read as follows:

Authority: 39 U.S.C. 503; 3633.

■ 2. Amend § 3015.7 by revising paragraph (a) and (b) to read as follows:

§ 3015.7 Standards for compliance.

* * * * *

(a) Incremental costs will be used to test for cross-subsidies by market dominant products of competitive products. To the extent that incremental cost data are unavailable, the Commission will use the sum of competitive products' volume-variable costs and product-specific costs supplemented to include causally related, group-specific costs to test for cross-subsidies.

(b) Each competitive product must recover its attributable costs as defined in 39 U.S.C. 3631(b). Pursuant to 39 U.S.C. 3631(b), the Commission will use a competitive product's incremental costs, which is the sum of volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product's incremental costs, to calculate attributable costs.

* * * * *

PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE

■ 3. The authority citation of part 3060 continues to read as follows:

Authority: 39 U.S.C. 503; 2011, 3633, 3634.

■ 4. Amend § 3060.10 by revising paragraph (b)(1) to read as follows:

§ 3060.10 Costing.

* * * * *

(b) * * *

(1) Attributable costs, including volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product's incremental costs; and

(2) * * *

■ 5. Amend § 3060.21 by revising Table 1—Competitive Products Income Statement—PRC Form CP–01 to read as follows:

§ 3060.21 Income report.

* * * * *

TABLE 1—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP–01

[$ in 000s]

	FY 20xx	FY 20xx–1	Percent change from SPLY	Percent change from SPLY
Revenue:	$x,xxx	$x,xxx	xxx	xx.x
(1) Mail and Services Revenues	xxx	xxx	xx	xx.x
(2) Investment Income	x,xx	x,xxx	xxx	xx.x
(3) Total Competitive Products Revenue	....	....	....	....
Expenses:	x,xxx	....	....	....
(4) Volume-Variable Costs	x,xxx	x,xxx	xxx	xx.x
(5) Product Specific Costs	x,xxx	x,xxx	xxx	xx.x
(6) Incremental Inframarginal Costs	x,xxx	x,xxx	xxx	xx.x
(7) Total Competitive Products Attributable Costs	x,xxx	x,xxx	xxx	xx.x
(8) Net Income Before Institutional Cost Contribution	x,xxx	x,xxx	xxx	....
(9) Required Institutional Cost Contribution	x,xxx	x,xxx	$xxx	x.x.x
(10) Net Income (Loss) Before Tax	x,xxx	x,xxx	$xxx	xx.x
(11) Assumed Federal Income Tax	x,xxx	x,xxx	$xxx	xx.x
(12) Net Income (Loss) After Tax	x,xxx	x,xxx	$xxx	xx.x

Line (1): Total revenues from Competitive Products volumes and Ancillary Services.
Line (2): Income provided from investment of surplus Competitive Products revenues.
Line (3): Sum total of revenues from Competitive Products volumes, services, and investments.
Line (4): Total Competitive Products volume-variable costs as shown in the Cost and Revenue Analysis (CRA) report.

TABLE 1—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP–01—Continued

[$ in 000s]

	FY 20xx	FY 20xx–1	Percent change from SPLY	Percent change from SPLY

Line (5): Total Competitive Products product-specific costs as shown in the CRA report.
Line (6): Inframarginal costs calculated as part of total Competitive Products incremental costs.
Line (7): Sum total of Competitive Products costs (sum of lines 4, 5, and 6).
Line (8): Difference between Competitive Products total revenues and attributable costs (line 3 less line 6).
Line (9): Minimum amount of Institutional cost contribution required under 39 CFR 3015.7 of this chapter.
Line (10): Line 8 less line 9.
Line (11): Total assumed Federal income tax as calculated under 39 CFR 3060.40.
Line (12): Line 10 less line 11.

[FR Doc. 2016–22162 Filed 9–14–16; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0478; FRL–9952–49–Region 2]

Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) amending existing nonattainment New Source Review (NNSR) and attainment New Source Review (Prevention of Significant Deterioration of Air Quality, PSD) program requirements. Specifically, the SIP revision includes new requirements pertaining to the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometer (PM$_{2.5}$) and the regulation of Greenhouse Gases (GHGs) under New York's Part 231, "New Source Review for New and Modified Facilities;" Part 201, "Permits and Registrations;" and amendments to Part 200, "General Provisions," of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) which will make the SIP consistent with existing federal requirements. The EPA is also proposing to approve certain elements of New York SIP revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead (Pb), 2008 ozone, and 2010 sulfur dioxide (SO$_2$) national ambient air quality standards (NAAQS).

DATES: Comments must be received on or before October 17, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2016–0478, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Frank Jon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4085; email address: *jon.frank@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What is being addressed in this document?
II. What is the background for this action?
III. What is EPA's analysis of New York's NSR rule revisions?
IV. How has the State addressed elements of the Section 110(a)(1) and (2) "infrastructure" provisions?
V. What action is EPA proposing to take?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews.

I. What is being addressed in this document?

On October 12, 2011, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA Region 2 a new set of revisions to the New York State Implementation Plan (SIP). This submittal consists of revisions to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 231, New Source Review for New and Modified Facilities; 6 NYCRR Part 200, General Provisions; and 6 NYCRR Part 201, Permits and Certificates. New York undertook this rulemaking to comply with EPA's May 16, 2008 NSR final rule for the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM$_{2.5}$). Also, the revisions implement EPA's October 20, 2010 final rule that establishes the PM$_{2.5}$ increments, significant impact levels, and significant monitoring concentrations. This proposed rulemaking implements PM$_{2.5}$ provisions that were not previously included in the November 17, 2010 EPA SIP approval of Part 231. This SIP revision also incorporates provisions that conform to EPA's June 3, 2010 final rule for Greenhouse Gases (GHGs) under its PSD and Title V programs, establishing major source applicability threshold levels for GHG emissions and other conforming changes such as the establishment of global warming potential values for calculating CO$_2$ equivalents under New York's PSD and Title V programs.

The EPA is also proposing to approve certain elements of New York SIP revisions as meeting CAA section 110(a) requirements for the 2008 Pb, 2008 ozone, and 2010 SO_2 NAAQS. NYSDEC submitted a SIP for the 2008 Pb NAAQS on October 13, 2011, as supplemented on February 24, 2012; for the 2008 ozone NAAQS on April 4, 2013; and for the 2010 SO_2 NAAQS on October 3, 2013.

II. What is the background for this action?

On November 17, 2010, EPA granted a partial approval to revisions of the New York SIP for 6 NYCRR Parts 200, 201 and Part 231 submitted by the NYSDEC on March 3, 2009. 75 FR 70140. This partial approval was issued with the caveat that EPA was taking no action at the time on (1) the PSD permitting threshold provisions to the extent that those provisions may require permits for sources of GHG emissions that equal or exceed the 100/250 tons per year (tpy) GHG levels but are less than the thresholds identified in EPA's final Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010); and (2) the PSD significance level provisions of New York's rule to the extent that those provisions may treat as significant GHG emissions increases that are less than the thresholds identified in the final Tailoring Rule. Id. We granted partial approval, in part, because in its August 11, 2010 letter to EPA, New York State confirmed to us that they have authority to regulate GHGs without any additional rulemaking or other administrative action. Subsequently, on October 12, 2011 New York submitted a SIP revision request which makes New York's authority to regulate GHG more explicit in the regulation itself. In addition, New York's SIP revision request addresses additional $PM_{2.5}$ requirements that were not included in the November 17, 2010 EPA SIP approval.

Under CAA sections 110(a)(1) and (2), states are required to submit SIPs that provide for the implementation, maintenance and enforcement of the NAAQS. The EPA refers to these types of SIP submissions as the "infrastructure" SIPs. States must make infrastructure SIP submissions within 3 years after the promulgation of a new or revised NAAQS. On November 12, 2008 (73 FR 66964), EPA promulgated a new rolling 3-month average NAAQS for Pb, which is 0.15 micrograms per cubic meter of air ($\mu g/m^3$) maximum not to be exceeded. On March 27, 2008 (73 FR 16436), EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for SO_2 at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.

This proposed action pertains only to the portions of the infrastructure SIPs submitted for the 2008 Pb, 2008 ozone, and 2010 SO_2 NAAQs pertaining to CAA sections 110(a)(2)(C); 110(a)(2)(D)(i)(II) prong 3 (PSD); and 110(a)(2)(J). EPA had previously approved most elements of New York's infrastructure SIP for the 2008 Pb NAAQS as fully meeting the requirements of section 110(a). See, EPA's final rule "Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 2008 Lead NAAQS," 80 FR 30939 (June 1, 2015). However, EPA had deferred taking final action on the lead SIP with respect to 110(a)(2)(C), 110(a)(2)(D)(i)(II) prong 3, and 110(a)(2)(J) elements until EPA approved, or simultaneously approved, $PM_{2.5}$ requirements for New York's PSD program. EPA will address the other elements of the infrastructure SIPs for the 2008 ozone, and 2010 SO_2 NAAQs in another action.

EPA's general approach to the review of infrastructure SIP submittals can be found in the December 15, 2014 (79 FR 74046) proposal to approve New York's 2008 Pb infrastructure SIP, and will not be repeated here. Both the proposed rule and final rules for the 2008 Pb NAAQS can also be found in the docket of this rulemaking.

III. What is EPA's analysis of New York's NSR rule revisions?

A number of developments have arisen since EPA's receipt of the SIP revision package that has affected EPA's review of the 6 NYCRR Part 231 SIP revision. These developments are:

(a) On July 21, 2011, then Assistant Administrator Gina McCarthy issued a memorandum entitled "Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)." See *http://www.epa.gov/sites/production/files/2015-07/documents/pm25trade.pdf.* The memorandum stated that under the EPA's revised policy, the interpollutant ratios contained in the preamble to the 2008 final rule will no longer carry an EPA presumptive approval status. Accordingly, if a state wishes to implement interpollutant trading, the state will be expected to develop its own separate $PM_{2.5}$ precursor offset ratios that are demonstrated to be suitable for addressing the particular precursor's relationship with ambient $PM_{2.5}$ concentrations for 24-hour and annual averaging periods that are causing violations in that nonattainment area. Therefore, since New York has not conducted and included such a demonstration for the $PM_{2.5}$ precursor offset ratios in the Part 231 SIP submittal, these offset ratios cannot presumptively be approved into the SIP.

(b) On January 22, 2013, the United States Court of Appeals for the District of Columbia granted an EPA request to vacate and remand to the EPA portions of two PSD regulations, promulgated in 2010. These two regulatory provisions are the Significant Impact Levels (SILs) for $PM_{2.5}$ promulgated under 40 CFR 52.21(k)(2) and 40 CFR 51.166(k)(2) and the $PM_{2.5}$ Significant Monitoring Concentration (SMC) promulgated under 40 CFR 52.21(i)(5)(i)(c) and 40 CFR 51.166(i)(5)(i)(c). On December 9, 2013, the EPA issued a final rule vacating these two elements and subsequently issued interim guidance on May 20, 2014 entitled "Guidance for $PM_{2.5}$ Permit Modeling." See *http://www3.epa.gov/ttn/scram/guidance/guide/Guidance_for_PM25_Permit_Modeling.pdf.* The EPA is currently drafting regulatory changes to address these two aspects of the PSD rule.

(c) On June 23, 2014, the Supreme Court of the United States issued a decision addressing the application of stationary source permitting requirements to greenhouse gases. *Utility Air Regulatory Group (UARG)* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014) In this decision, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD or title V permit. The Supreme Court also said that the EPA could continue to require that PSD permits otherwise required, based on emissions of conventional pollutants, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). See the EPA guidance dated December 19, 2014 on this topic at *http://www.epa.gov/sites/production/files/2015-07/documents/201412step2.pdf.*

In light of the above developments, the NYSDEC on July 28, 2016 requested the EPA to withdraw specific regulatory language that deals with the above provisions from the SIP submittal. Removal of the above provisions from the SIP submittal request is appropriate since EPA has or is in the process of developing additional guidance/regulations that will address the above issues with a timetable as to when the SIP revisions are due from the States to EPA. The specific provisions of 6 NYCRR Parts 201 and 231 that New York has asked the EPA to be withdrawn are:

1) PM$_{2.5}$ Inter-pollutant trading provisions codified in both 6 NYCRR 231-5.5 (b)(3) and 231-6.6 (b)(3) as follows:

   An emission offset of PM-2.5 (including its precursors SO$_2$ and NOx) must at least equal (offset ratio of one to one or greater) the corresponding facility potential to emit or project emission potential of the same pollutant (subsequent to application of LAER), as appropriate, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required to provide a net air quality benefit as set forth in this section. ***Inter-pollutant trading may be used for offsetting direct emissions of PM-2.5 (including its precursors SO$_2$ and NOx). Inter-pollutant offset ratios are as follows: one ton PM-2.5 offsets 200 tons NOx, one ton PM-2.5 offsets 40 tons SO$_2$, 200 tons NOx offsets one ton PM2.5 and 40 tons SO$_2$ offsets one ton PM-2.5. The use of NOx and SO$_2$ to offset one another is not allowed.***

   NYSDEC has withdrawn the bold and underlined portion.

2) 231-10.1(d) – General Provisions for Emission Reduction Credits (ERCs)

   An ERC, to be used as an offset, must be the same regulated NSR contaminant as the emission increase requiring the ERC, ***except for PM-2.5. An ERC of PM-2.5 (including its precursors SO$_2$ and NOx) may be used as an offset for direct emissions of PM-2.5. In addition, direct emissions of PM-2.5 can be used to offset emission of its precursors. These emission offsets must follow the ratio requirements of section 231-5.5(b)(3) and 231-6.6(b)(3) of this Part.***

   NYSDEC has withdrawn the bold and underlined portion.

3) 231-12.4(a)(1) Exemption and waiver from onsite (i.e., site specific) air quality monitoring

   PM$_{2.5}$ ---------------------------------- 4ug/m^3, 24-hr average;

   NYSDEC has withdrawn this PM$_{2.5}$ Significant Monitoring Concentration (SMC) value of 4 ug/m^3 from the New York SIP submission and has temporarily replaced with a value of 0 (zero) until regulatory changes are made.

4) 231-12.7 Significant impact levels for facilities located in attainment areas. Specifically, for PM$_{2.5}$

   PM$_{2.5}$ annual average: 0.3 ug/m^3
   PM$_{2.5}$ 24-hr average: 1.2 ug/m^3

   NYSDEC has withdrawn these PM$_{2.5}$ SILs.

5) 231-13.5 Table 5 – Major facility thresholds for attainment and unclassified areas.

****Greenhouse Gases: 100/250 tpy and 100,000 tpy (measured as CO_2 equivalents).***

****Except for Step 2 GHG PSD sources which are major for GHG only.***

NYSDEC has withdrawn these GHG major source thresholds for sources that are major for GHG only.

6) a) Definitions in 201-2.1(b)(21)(i)

Except as otherwise expressly provided in this paragraph, a stationary source, source, or facility that directly emits or has the potential to emit, 100 tons per year (tpy) or more of any air pollutant or air contaminant regulated under the act except for greenhouse gases (including any stationary source, source or facility which emits only fugitive emissions, of any such pollutant or contaminant, as determined through regulation by the administrator). ***For greenhouse gases, a stationary source, source, or facility that directly emits or has the potential to emit 100 tpy or more, and 100,000 tpy or more of CO_2 equivalents.*** *Fugitive emissions shall not be considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories identified in subparagraph (iii) of this paragraph.*

b) Definitions in 201-2.1(b)(21)(v)

For purposes of determining the applicability of Part 231 of this Title with respect to prevention of significant deterioration (PSD) requirements only, a stationary source, source, or facility located in an attainment area of the State where the stationary source, source, or facility potential to emit of any attainment contaminant regulated under the act, except for greenhouse gases, equals or exceeds 250 tpy, or equals or exceeds 100 tpy if the stationary source, source, or facility belongs to one of the source categories listed in clauses (a) through (z) of subparagraph (iii) of this paragraph. ***For greenhouse gases, a stationary source, source, or facility that directly emits or has the potential to emit 100 or 250 tpy or more, as applicable, and 100,000 tpy or more of CO2 equivalents.*** *Fugitive emissions shall not be considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories listed in subparagraph (iii) of this paragraph.*

NYSDEC has withdrawn the bold and underlined portions.

IV. How has the state addressed elements of the CAA Section 110(a)(1) and (2) "infrastructure" provisions?

New York's submittals demonstrate how the State, where applicable, has a plan in place that meets the requirements of CAA Section 110 for certain elements for the 2008 Pb, 2008 ozone and 2010 SO_2 NAAQS. The plans reference the current New York SIP, the New York Codes of Rules and Regulations (NYCRR), the New York Environmental Conservation Law (ECL) and the New York Public Officer's Law (POL). The NYCRR, ECL and POL referenced in the submittal are publicly available. New York's SIP can be found at 40 CFR 52.1670 and is posted on the Internet at: *http://www.epa.gov/region02/air/sip/ny_reg.htm.*

As discussed in the following sections, EPA has reviewed and evaluated elements and sub-elements of New York's Infrastructure SIPs for 2008 Pb, 2008 Ozone, and 2010 SO_2 for CAA Section 110(a)(2)(C); 110 (a)(2)(D)(i)(II) [PSD (Prong 3)]; and 110(a)(2)(J).

Element 110(a)(2)(C): Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet PSD of Air Quality and minor source new source review.

New York's Infrastructure SIP submittals for 2008 Pb, 2008 ozone and 2010 SO_2 NAAQS reference New York's Environmental Conservation Law (ECL)

§ 19–0305, which provides New York with the authority for the enforcement of all control measures that have been adopted into the SIP. New York also references the State's PSD and Nonattainment New Source Review (NNSR) permitting program contained in 6 NYCRR Part 231, "New Source Review for New and Modified Facilities," and the State's permitting program contained in 6 NYCRR 201, "Permits and Certificates." EPA approved New York's PSD and NNSR program into the SIP on November 17, 2010 (75 FR 70140). New York's minor new source review program is also regulated under Part 201.

EPA has reviewed and evaluated New York's Infrastructure SIP for the 2008 Pb, 2008 ozone and 2010 SO_2 NAAQS with respect to the requirements of element C.

EPA concludes that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced for the 2008 Pb, 2008 ozone and 2010 SO_2 NAAQS. Under § 19–0311 of the ECL, New York has the authority to establish a permitting program. New York's SIP-approved program under Part 231 includes both PSD permitting requirements, which regulate major sources in attainment areas, and Nonattainment New Source Review requirements, which regulate major sources located in nonattainment areas. New York's Part 231 includes permitting requirements for Pb, SO_2 and the precursors of ozone (*i.e.*, nitrogen oxides and volatile organic compounds). New York's permitting regulations are set forth in 6 NYCRR Part 201, "Permits and Certificates." Major sources of air pollution are covered by State Facility permits (Subpart 201–5) and Title V permits (Subpart 201- 6). In addition, New York has implemented a permitting program for minor sources of air pollution; these sources are covered by minor facility registrations (6 NYCRR Subpart 201–4).

New York's program ensures that all applicable PSD requirements are included in PSD permits and are incorporated into title V operating permits, and that all federally-enforceable requirements are applied and enforced. The State's PSD permitting requirements in Part 231 regulate Pb, SO_2, and the precursors of ozone. The PSD portion of Part 231 regulates the construction of proposed new or modified facilities that are required to demonstrate in their permit application that allowable emission increases from the facilities, in conjunction with all other applicable emission increases or reductions (including secondary emissions), would not, among other things, cause or significantly contribute to air pollution in violation of any NAAQS or increment in any air quality control region. Since Pb, SO_2, and ozone are NAAQS, the PSD provisions of Part 231 are applicable.

Section 110(a)(2)(C) is applicable to all NSR pollutants subject to regulation under the CAA. See, *e.g.*, CAA section 165(a)(4). As mentioned in section II, above, and as further described in EPA's final rule approving elements of the New York Lead Infrastructure SIP,[1] EPA had deferred taking final action approving 110(a)(2)(C) (as well as 110(a)(2)(D)(i)(II) prong 3, and 110(a)(2)(J)) until EPA approved, or simultaneously approved, $PM_{2.5}$ requirements for New York's PSD program. Because the scope of 110(a)(2)(C) is comprehensive (covering all pollutants subject to regulation under the CAA, including GHG), a fully approved comprehensive PSD program addressing all regulated NSR pollutants is needed in order to approve the infrastructure SIP for any one pollutant. As described in section III of this rulemaking, the NYSDEC has requested to withdraw specific language from its SIP submittal that had affected EPA's review of the 6 NYCRR Part 231 SIP revision. Upon final approval of the revisions to 6 NYCRR Part 231 into the SIP, New York will have addressed all regulated pollutants.

EPA proposes to find that the State has adequate authority and regulations to ensure the enforcement of emission limits and control measures for the 2008 Pb, 2010 SO_2 and 2008 ozone NAAQS. EPA also proposes to find that New York has met the requirements of 110(a)(2)(C) regarding regulation of minor sources and minor modifications for the 2008 Pb, 2008 ozone and 2010 SO_2 NAAQS.

Sub-Element 110(a)(2)(D)(i)(II) Prong 3: Interstate Transport, PSD

Section 110(a)(2)(D) of the Clean Air Act is divided into two subsections: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). The first of these, 110(a)(2)(D)(i), in turn, contains four "prongs" the first two of which appear in 110(a)(2)(D)(i)(I) and the second two of which appear in 110(a)(2)(D)(i)(II). The two prongs in 110(a)(2)(D)(i)(I) require New York's SIP to contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in any other state with respect to any primary or secondary NAAQS (prong 1), or interfere with maintenance by any other state with respect to any primary or secondary NAAQS (prong 2). The two prongs in 110(a)(2)(D)(i)(II) prohibit any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Subsection 110(a)(2)(D)(ii) addresses interstate and international pollution abatement, and requires SIPs to include provisions insuring compliance with sections 115 and 126 of the CAA, relating to interstate and international pollution abatement.

In this action, EPA is proposing to approve 110(a)(2)(D)(i)(II)(prong 3) for the 2008 Pb, 2008 ozone, and 2010 SO_2 NAAQS. EPA has previously taken action on 110(a)(2)(D)(i)(I)(prongs 1 and 2) and 110(a)(2)(D)(i)(II)(prong 4) for 2008 Pb. EPA has proposed action on 110(a)(2)(D)(i)(I)(prongs 1 and 2) and 110(a)(2)(D)(i)(II)(prong 4) for the 2008 ozone NAAQS, and will finalize in a separate rulemaking. EPA will also address 110(a)(2)(D)(i)(I)(prongs 1 and 2) and 110(a)(2)(D)(i)(II)(prong 4) for the 2010 SO_2 NAAQS in a separate rulemaking.

To satisfy section 110(a)(2)(D)(i)(II), prong 3, New York relies on its PSD program to prevent significant deterioration of air quality within other states. New York has affirmed that the program remains in effect and continues to apply for 2008 Pb, 2008 ozone, and 2010 SO_2.

As discussed in the preceding section regarding 110(a)(2)(C), a state's PSD program must address all pollutants subject to regulation under the CAA. Upon final approval into the SIP of this proposed approval of the revisions to 6 NYCRR Part 231, New York will have addressed all regulated pollutants.

Element 110(a)(2)(J) Consultation With Government Officials, Public Notification, PSD, and Visibility

Section 110(a)(2)(J) requires states to have a plan that meets the applicable requirements of CAA section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to significant deterioration and visibility protection).

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121 relating to consultation.

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[1] 80 FR 30939 (June 1, 2015).

In December 2006, New York established a SIP Coordinating Council consisting of senior policy representatives from 19 state agencies and authorities, as well as a SIP Task Force consisting of officials from 37 local governments and designated organizations of elected officials. New York has also participated in the consultation process for Regional Haze (40 CFR 51.308). EPA proposes to find that the 110(a) submittals from New York meet the requirements of 110(a)(2)(J) for consultation with government officials for 2008 Pb, 2008 ozone, and 2010 SO_2.

Section 110(a)(2)(J) further requires states to notify the public if the NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. New York maintains an Air Quality Web site[2] for reporting daily air quality to the public, including current air quality status, air quality forecasts, monitoring information, reports and pollutant health effects related to air quality readings. New York posts warnings on the above-referenced Web site and issues press releases to local media outlets if dangerous conditions are expected to occur. In the case of a predicted or forecasted air quality exceedance, the public is urged to follow energy-saving and pollution-reducing steps such as limiting the use of appliances and carpooling. EPA proposes to find that the 110(a) submittals from New York meet the requirements of 110(a)(2)(J) for public notification for 2008 Pb, 2008 ozone, and 2010 SO_2.

Section 110(a)(2)(J) also requires states to meet applicable requirements of Part C related to PSD and visibility protection. The approvability of a state's PSD program in its entirety is essential to approvability of the PSD portion of this element. As discussed previously concerning approvability of 110(a)(2)(C) and 110(a)(2)(D)(i)(II) prong 3, a state's PSD program must address all NSR pollutants subject to regulation under the CAA. Upon final approval into the SIP of this proposed approval of the revisions to 6 NYCRR Part 231, New York will have addressed all regulated pollutants for PSD. With respect to the visibility component of 110(a)(2)(J), EPA believes that the visibility protection requirements are not "applicable requirements" within the meaning of section 110(a)(2)(J) and that the SIP is not required to be revised with respect to visibility protection merely due to promulgation of, or revision to, these NAAQS. Regardless, New York submitted and EPA approved New York's Regional Haze SIP. 77 FR 51915 (Aug. 28, 2012). EPA proposes to find that the 110(a) submittals from New York meet the requirements of 110(a)(2)(J), for PSD, for 2008 Pb, 2008 ozone, and 2010 SO_2 NAAQS.

V. What action is EPA proposing to take?

As requested by New York, EPA is proposing to withdraw the above specified regulatory sections of 6 NYCRR Parts 201 and 231 from EPA's review of the SIP submittal. EPA is proposing to approve into the SIP the remaining revisions to 6 NYCRR Part 200, 6 NYCRR Part 201 and 6 NYCRR Part 231 which became effective under NYS law on October 15, 2011, and were submitted by the State of New York to EPA on October 12, 2011. Specifically, EPA is proposing to approve the remaining revisions of subparts 200.1 and 200.9, as effective on October 15, 2011, and subpart 201–2, as effective October 15, 2011. EPA is also proposing to approve the remaining revisions to 6 NYCRR Part 231, as effective on October 15, 2011.

EPA is also proposing to approve New York's infrastructure SIP submittals for 2008 Pb, 2008 ozone, and 2010 SO_2 for 110(a)(2) elements and sub-elements, as follows: 110(a)(2)(C), 110(a)(2)(D)(i)(II) prong 3, and 110(a)(2)(J).

VI. Incorporation by Reference

In this rule, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference revised versions of 6 NYCRR Part 200, 6 NYCRR Part 201 and 6 NYCRR Part 231, which were discussed in section III above, and became effective under NYS law on October 15, 2011, and were submitted by the State of New York to EPA on October 12, 2011.

The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and/or in hard copy at the appropriate EPA office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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[2] *http://www.dec.ny.gov/chemical/34985.html.*

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2016–22238 Filed 9–14–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2016–0078; 4500030113]

RIN 1018–BB64

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Chorizanthe parryi var. fernandina (San Fernando Valley Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list *Chorizanthe parryi* var. *fernandina* (San Fernando Valley spineflower), a plant species from southern California, as a threatened species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species. This document also serves as the 90-day and 12-month findings on two petitions to list *C. parryi* var. *fernandina* as an endangered species.

DATES: We will accept comments received or postmarked on or before November 14, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 31, 2016.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2016–0078, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2016–0078, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93001; telephone 805–644–1766; facsimile 805–644–3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) *Chorizanthe parryi* var. *fernandina's* biology, range, and population trends, including:

(a) Biological or ecological requirements of the plant

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the plant, its habitat, or both.

(2) Factors that may affect the continued existence of the plant, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this plant and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of *Chorizanthe parryi* var. *fernandina,* including the locations of any additional populations of this plant.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described above in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified above in **DATES**. Such requests must be sent to the address shown above in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal**

Register and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are seeking the expert opinions of six appropriate and independent specialists regarding this proposed rule. A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and potential threats—is presented in the San Fernando Valley Spineflower (*Chorizanthe parryi* var. *fernandina)* Species Report (Species Report) available at *http://regulations.gov* under Docket No. FWS–R8–ES–2016–0078. A summary of this analysis is found in this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in *C. parryi* var. *fernandina's* biology, habitat, physical or biological factors, or threats, and their review of the Species Report will inform our final determination. We invite comment from the peer reviewers during this public comment period.

Previous Federal Action

We designated *Chorizanthe parryi* var. *fernandina* as a candidate species for listing in the October 25, 1999, candidate notice of review (CNOR) (64 FR 57534) based on its discovery along the southern rim of Laskey Mesa and within the footprint of the proposed Ahmanson Ranch project site in southeastern Ventura County, California (Glenn Lukos and Associates (GLA) 2000, p. 1). Prior to its rediscovery in 1999, *C. parryi* var. *fernandina* was not seen for a period of 70 years (1929–1999); it was last collected in 1929, near Castaic in Los Angeles County (Reveal and Hardham 1989, p. 149) and was presumed extinct by the botanical community. We gave *C. parryi* var. *fernandina* a listing priority number (LPN) of 3, which denotes a subspecies or variety facing an imminent threat of high magnitude and low recovery potential.

On December 6, 1999, and January 27, 2000, we received petitions from the City of Calabasas and from the Santa Monica Mountains Conservancy (SMMC), respectively, to list the plant under the Act as an endangered species. In 2000, *Chorizanthe parryi* var. *fernandina* was discovered near Santa Clarita in Los Angeles County, California, on land owned by the Newhall Land and Farming Company (Newhall Land Company) within the footprint of the proposed Newhall Ranch development project. Because *C. parryi* var. *fernandina* was already a candidate, we did not conduct either a 90-day or 12-month finding for the species following receipt of the petitions. This document constitutes our proposed rule to list *C. parryi* var. *fernandina* as a threatened species, as well as both our 90-day and 12-month findings on the petitions to list *C. parryi* var. *fernandina*.

In the May 4, 2004, CNOR (69 FR 24876), we changed the LPN for *Chorizanthe parryi* var. *fernandina* from 3 to 6 because we determined that impacts associated with habitat destruction or modification at Laskey Mesa had decreased. The proposed development of Ahmanson Ranch at the Laskey Mesa site did not move forward as previously proposed. This site was purchased by the State of California in 2003, and became part of the Upper Las Virgenes Canyon Open Space Preserve. An LPN of 6 denotes a subspecies or variety facing a nonimminent threat of high magnitude and low recovery potential. *C. parryi* var. *fernandina* has been included, with an LPN of 6, in all subsequent CNORs (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015).

Chorizanthe parryi var. *fernandina* was one of many taxa included in our May 10, 2011, multiyear work plan filed as part of a proposed settlement agreement with Wild Earth Guardians and others in a consolidated case in the U.S. District Court for the District of Columbia challenging our failure to make listing determinations for candidate species (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (“MDL Litigation”), Document 31–1 (D. DC May 10, 2011) (“MDL Settlement Agreement”)). On September 9, 2011, the court accepted our agreement with plaintiffs on a schedule to publish proposed rules or not-warranted findings for the 251 species designated as candidates in 2010 (including *C. parryi* var. *fernandina*) no later than September 30, 2016.

Background

A thorough review of the taxonomy, life history, ecology, population distribution and abundance, and land ownership of *Chorizanthe parryi* var. *fernandina* is presented in the Species Report (Service 2016, pp. 7–20), available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2016–0078; a summary of this information is presented below. We used data specific to *C. parryi* var. *fernandina* when available.

Physical and Biological Characteristics

Chorizanthe parryi var. *fernandina* is a low-growing herbaceous annual plant in the Polygonaceae (buckwheat) family and is typical of many winter-spring native annuals that occur in the Mediterranean climate of California. Historical records show that *C. parryi* var. *fernandina* was found in washes and sandy areas, in the hills and on mesas, generally around the foothills of the San Gabriel Mountains and near Santa Ana in Orange County (Reveal 1989, p. 402; CDFG 2002, p. 12). The probable vegetation in these areas is a type of alluvial scrub called Riversidean alluvial fan sage scrub (Holland, 1986, p. 11; Sawyer *et al.* 2009, pp. 389–391). Currently, *C. parryi* var. *fernandina* is a plant of open habitats, predominately found within openings of sparsely vegetated scrub communities and grasslands, and in the transition zone between these two communities (Dudek 2010a, p. 21; Sapphos 2001, p. 5–13). *C. parryi* var. *fernandina* occurs primarily in areas of poorly developed soils, mostly in loam or silty clay loam with a much lower level of occurrence on sandy loams, and with shallow depth to bedrock and compacted soils. The conditions under which *C. parryi* var. *fernandina* persists are most likely due to decreased competition from native and nonnative plants, as it occurs in areas where other plants cannot become established (Sapphos 2001, p. 5–13; GLA 2000, p. 18; Dudek 2010a, p. 23).

Chorizanthe parryi var. *fernandina* adapted a generalist pollination strategy. The presence of smaller pollinator species (*i.e.*, native ants) and larger, more mobile pollinators (*i.e.*, honeybees (*Apis mellifera*)) facilitates overall reproductive success (Jones *et al.* 2009, p. 39). Seeds of *C. parryi* var. *fernandina* are small, possess no morphological modifications for wind or animal dispersal, and remain in the involucre even after the plant disarticulates (Sapphos 2001, p. 3–5). Small mammals, along with native ants (*e.g.*, harvester ants (*Pogonomyrmex* or *Messor* spp.)), may play a role in seed dispersal (CBI 2000, p. 3). In addition, bioturbation (reworking of soils and sediments by animals or plants) and bare soil patches related to rodent activity have been associated with *C.*

parryi var. *fernandina* (GLA 2000, p. 18; CBI 2000, p. 7).

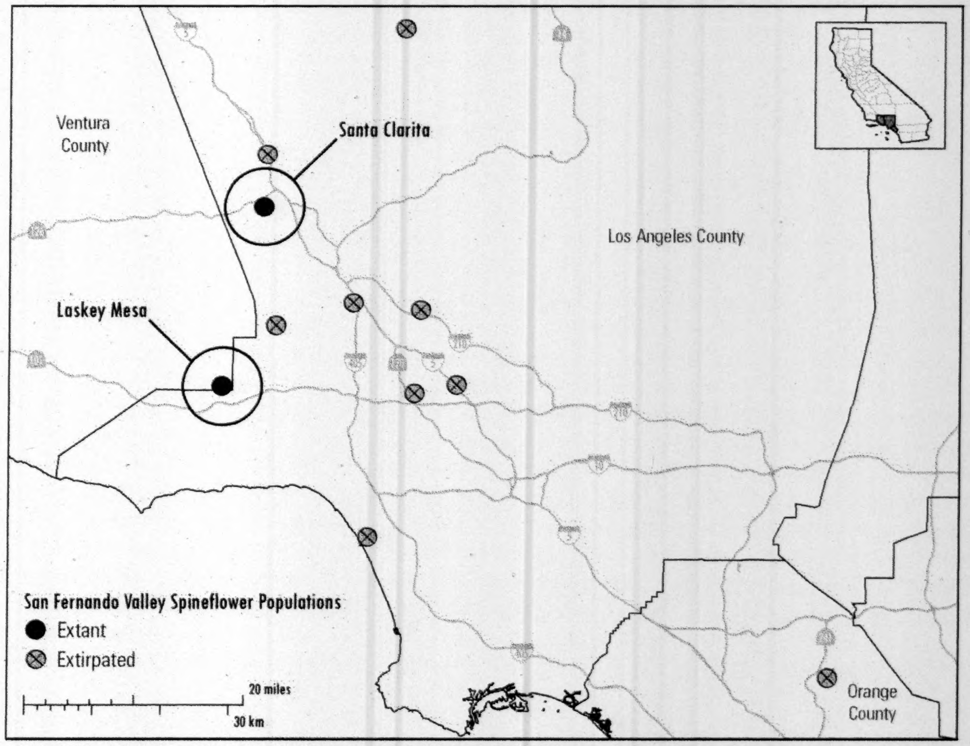
The genetic characteristics of *Chorizanthe parryi* var. *fernandina* have not been investigated; however, Dr. Deborah Rodgers is currently conducting research of the plant's genetic structure (Dudek 2015, p. 2; Dudek 2016c, p. 9). As of January 2016, all field collection is complete and the study is ongoing (D. Rodgers 2016, pers. comm.).

Historical Abundance and Distribution

Historically, *Chorizanthe parryi* var. *fernandina* was known from no fewer than 10 locations in Los Angeles and Orange Counties (CDFG 2002, p. 14) (see Figure 1, below). The species was last collected in 1929, was not seen for 70 years (1929–1999), and was presumed extinct by the botanical community because *C. parryi* var. *fernandina* was extirpated from all of the areas where it was originally collected (Reveal and Hardham 1989, p. 149). The majority of the historical collections of *C. parryi* var. *fernandina* from the greater Los Angeles metropolitan area were made in areas where urban, agricultural, and industrial development have replaced native habitats. Numerous field botanists have tried to rediscover it, but all efforts have been unsuccessful (Reveal and Hardham 1989, p. 149).

In 1999, *Chorizanthe parryi* var. *fernandina* was discovered along the southern rim of Laskey Mesa within the footprint of the proposed Ahmanson Ranch development project in southeastern Ventura County, California (GLA 2000, p. 1); this was the only known extant population of this plant. The area occupied by *C. parryi* var. *fernandina* in 1999 was estimated to be approximately 6 acres (ac) (2.4 hectares (ha)), comprised of approximately 23,000 plants (GLA 2000, pp. 6–9). The potential threats to the *C. parryi* var. *fernandina* population at this site were reduced in 2003, when the Ahmanson Ranch project did not occur as planned and the State of California purchased the property. However, due to historical land uses at this site, the population has been impacted by loss of habitat and invasive, nonnative grasses.

In 2000, *Chorizanthe parryi* var. *fernandina* was discovered near Santa Clarita in Los Angeles County, California, on land owned by Newhall Land Company. The 2000 survey data did not include population estimates. This population is within the footprint of the proposed Newhall Ranch development project.



Sources: California Department of Fish and Wildlife, California Natural Diversity Database (2015/11/01).

Figure 1. Historical and current *Chorizanthe parryi* var. *fernandina* population locations in California.

Current Abundance and Distribution

Chorizanthe parryi var. *fernandina* currently occupies up to a total of 35 to 40 ac (14 to 16 ha) from two populations in Southern California that are 17 miles (mi) (27 kilometers (km)) apart (see Figure 1, above). The Laskey Mesa population is in Ventura County, California, within the Upper Las Virgenes Canyon Open Space Preserve on land owned by the SMMC and the Mountains Recreation Conservation

Authority (MRCA) (L.A. Mountains 2015; Newhall Land Company 2015, p. 8; MRCA 2015; SMMC 2015). The Santa Clarita population is in Los Angeles County on land owned by Newhall Land Company (Dudek 2010a, pp. 16–17). The Laskey Mesa population currently occupies approximately 15–20 ac (6.1–8.1 ha) (GLA 2000, p. 6; Sapphos 2001, p. 5–2; Sapphos 2003a, p. 3; Cooper 2015, pp. 8–10); the Santa Clarita population currently occupies approximately 20 ac (8.2 ha) (Dudek 2010a, p. 63).

Comparing annual numbers of *Chorizanthe parryi* var. *fernandina* individuals over time is complicated because: (1) Different methodologies and levels of effort have been used to estimate population numbers across both extant populations during survey efforts since 1999; and (2) as is typical of many annual plants, *C. parryi* var. *fernandina* shows inter-annual variation in abundance by several orders of magnitude, ranging from hundreds to millions of individuals. Therefore, occupied area or distribution of the populations is an appropriate surrogate measure for plant population size.

Because of the fluctuation in occupied area and population numbers and the different methodologies used to conduct surveys, we are not able to determine if the population is stable or increasing or decreasing at this time. The area occupied by *Chorizanthe parryi* var. *fernandina* at Laskey Mesa when it was discovered in 1999 was approximately 6 ac (2.4 ha), was up to 19 ac (7.7 ha) in 2003, and was estimated to be approximately 14 ac (5.7 ha) in 2015. The occupied area that was mapped in 2003 appears to have declined overall, though there were areas of expansion (GLA 2000, p. 6; Sapphos 2001, p. 5–2; Sapphos 2003a, p. 3; Cooper 2015, p. 10). The Laskey Mesa population occurs over an area approximately 1 mi (1.6 km) from east to west, and 0.5 mi (0.8 km) from north to south. At the Santa Clarita population, total area occupied per year has ranged from 0.5–16.5 ac (0.2–6.7 ha) between 2002 and 2007. The most recent data from 2011 to 2014 show the cumulative acreage across years ranged from 17.8–20.7 ac (7.2–8.4 ha). There are no population estimates from 2011 through 2014. The Santa Clarita population has roughly the same occupied acreage as Laskey Mesa but is more widely distributed across the landscape, scattered over a range of 4 mi (6.4 km) from east to west, and 4 mi (6.4 km) north to south.

Planned Conservation Measures

At the Laskey Mesa population, there is currently no on-the-ground management of *Chorizanthe parryi* var. *fernandina;* however, the site is conserved as permanent parkland as part of the Upper Las Virgenes Canyon Open Space Preserve. At the Santa Clarita population, the California Department of Fish and Game (CDFG) (referred to as the California Department of Fish and Wildlife (CDFW) as of 2014) issued a California Endangered Species Act section 2081 incidental take permit (ITP) to Newhall Land Company for the partial removal of *C. parryi* var. *fernandina* due to the proposed Newhall Ranch development project. Newhall Land Company developed the Spineflower Conservation Plan (SCP), which was finalized in 2010 (Dudek 2010a) (available at *http://www.regulations.gov*). The SCP serves as the mitigation and conservation plan for the purposes of the ITP (CDFG 2010, p. 2).

As part of the SCP, Newhall Land Company has created a set of seven preserves that include 76 percent of the *Chorizanthe parryi* var. *fernandina* occurrences and occupied habitat at the Santa Clarita site, the majority of which would be adjacent to and bordered by the proposed Newhall Ranch development project. The SCP also includes management actions within the preserves to reduce indirect effects of the proposed development (including those from nonnative, invasive grasses and Argentine ants (*Linepithema humile*)). Newhall Land Company proposes to implement an adaptive management program for impacts under the SCP (Dudek 2010a, p. 141) and the Argentine Ant Control Plan (AACP) (Dudek 2014c, p. 22). Easements and a management endowment for the preserves and monitoring have been established. The rest of the SCP has not yet been implemented.

The proposed development of Newhall Ranch would remove 24 percent of the occurrences of *Chorizanthe parryi* var. *fernandina* and its habitat, and would separate occurrences more than current conditions by removing *C. parryi* var. *fernandina* that connect, or are intermittent between, the larger concentrations of *C. parryi* var. *fernandina* within the designated preserves. Newhall Land Company has proposed to reduce the impacts of this habitat fragmentation by integrating corridors (in particular the Santa Clara River riparian corridor) into their development plans, along with potential *C. parryi* var. *fernandina* outplanting within the preserves (Dudek 2010a, pp. 146–148). Six of the seven preserves are directly connected to adjacent natural or human-created open space via the river corridor, and the seventh, Entrada, is connected to open space via an existing and frequently-maintained utility corridor (CDFW *in litt.* 2016, p. 3). The open space areas within the proposed Newhall Ranch project as a whole, to which the preserves are connected, are intended to maintain landscape-level ecological functions and processes (CDFW *in litt.* 2016, p. 2–3). Open space varies in size and habitat quality, and according to the proposed development plan, human development would be adjacent to or border the majority of the preserves and the corridors. The SCP stresses maintaining natural hydrological conditions during construction of Newhall Ranch to prevent invasion of Argentine ants. However, even though construction has not yet begun, Argentine ants have been identified in two of the preserves and in adjacent corridors. Newhall Land Company proposes to implement control measures for Argentine ants using an integrated pest management strategy (Dudek 2014c, entire).

Newhall Land Company has also deposited funds with the National Fish and Wildlife Foundation for management of *Chorizanthe parryi* var. *fernandina* at the Laskey Mesa site. The August 2014 property analysis record and September 2014 memorandum prepared by Dudek identify the management activities for *C. parryi* var. *fernandina* at Laskey Mesa (Newhall Land Company and Dudek 2014, entire). The funding is to be used for on-the-ground management activities that include research studies, fencing, weeding, surveys, annual reporting, and other activities. When this funding becomes accessible, we anticipate that the MRCA will implement the identified management activities.

In addition, Newhall Land Company recently developed a draft "San Fernando Valley Spineflower Enhancement and Introduction Plan," which outlines a proposal to experimentally introduce *Chorizanthe parryi* var. *fernandina* to areas at the Santa Clarita site that have never been known to be occupied and are outside of the development footprint (Newhall Land Company 2016, entire). We anticipate continuing to work with Newhall Land Company and CDFW on additional conservation for *C. parryi* var. *fernandina* at the Santa Clarita population. The intervening time between a proposed and possible final rule to list this species provides the opportunity to develop measures to improve the future status of *C. parryi* var. *fernandina* at this site.

In our Species Report (Service 2016), we completed an initial evaluation of the potential effectiveness of the conservation measures in the 2010 SCP, but because Newhall Land Company is supplementing their conservation strategy, we do not consider this evaluation finalized. We will continue to work with Newhall Land Company and CDFW in the development of an expanded and supplemented conservation strategy, and will formally evaluate all measures included in the supplemental conservation strategy using the Service's Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003), thereby taking all formalized conservation measures into consideration before making our final determination of the status of the plant.

Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed a comprehensive assessment of *Chorizanthe parryi* var. *fernandina* (Service 2016, entire), which is summarized in this document and available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2016–0078. All potential threats of which we are aware that may be acting upon *C. parryi* var. *fernandina* currently or in the future (and consistent with the five listing factors identified in section 4(a)(1) of the Act) are evaluated and addressed in the Species Report (Service 2016, entire).

Stressors that currently act, or may act, on *Chorizanthe parryi* var. *fernandina* in the foreseeable future include development; nonnative, invasive plants; Argentine ants; grazing and agriculture; utility line easements and maintenance; miscellaneous land use; recreation; wildfire; and climate change. The effects of these stressors are magnified by virtue of the plant having small population sizes. For the purposes of this analysis, we define the "foreseeable future" time period to be 25 years. This timeframe takes into account the potential impacts of the completion of the proposed development of Newhall Ranch, variation in climate, and planned conservation measures for the Laskey Mesa and Santa Clarita populations. All of these potential stressors are evaluated and presented in our 2016 Species Report (Service 2016, pp. 20–78). The best available data indicate that grazing and agriculture, utility line easements and maintenance, miscellaneous land use, recreation, and wildfire are not resulting in population or rangewide impacts currently or in the future such that they rise to the level of threats. We conclude this because these activities have been or will be removed from most areas that overlap *C. parryi* var. *fernandina,* with the exception of wildfire, for which current impacts at Laskey Mesa and Santa Clarita will remain approximately the same into the future. The remaining stressors—development; nonnative, invasive plants; Argentine ants; and potentially climate change—acting on the small isolated populations are described below because we have determined that population or rangewide impacts may contribute to, or are likely to contribute to, considerable loss of individuals or habitat currently or in the future.

Development

Development consists of converting the landscape into residential, commercial, industrial, and recreational features, with associated infrastructure such as roads. Historically, *Chorizanthe parryi* var. *fernandina* was known from no fewer than 10 locations in Los Angeles and Orange Counties (CDFG 2002, p. 14) (see Figure 1, above). After 1929, the plant was presumed extinct by the botanical community because *C. parryi* var. *fernandina* was extirpated from all of the areas where it was originally collected. The majority of the historical collections of *C. parryi* var. *fernandina* from the greater Los Angeles metropolitan area were made in areas where development has replaced native habitats (Reveal and Hardham 1989, p. 149).

In 1999, *Chorizanthe parryi* var. *fernandina* was discovered at Laskey Mesa within the footprint of the proposed Ahmanson Ranch development project site. This proposed development did not occur as planned. The State of California purchased the property for conservation in 2003. In 2000, *C. parryi* var. *fernandina* was discovered near Santa Clarita on land owned by the Newhall Land Company (Dudek 2010a, pp. 16–17) at the site of the proposed Newhall Ranch development. Currently, development does not impact *C. parryi* var. *fernandina* at either population. In the future, there will be no development at the Laskey Mesa site because the property is owned and managed by the SMMC and MRCA, and preserved as permanent parkland. At the Santa Clarita site, the population is within the footprint of the proposed Newhall Ranch development project.

As planned, the future development of the proposed Newhall Ranch would directly remove 24 percent of the *Chorizanthe parryi* var. *fernandina* population and occupied habitat at the Santa Clarita site, reducing the population from 20.24 ac (8.2 ha) to 15.4 ac (6.2 ha) (Dudek 2010a, Table 12, p. 67). The proposed development would also create indirect effects by fragmenting the habitat between the occurrences of *C. parryi* var. *fernandina,* which would: (1) Create edge effects around remaining populations, such as increasing the risk of invasion of nonnative, invasive plants and animals; and (2) separate occurrences more than current conditions because much of the area between the remaining occurrences would be residential and commercial development (Dudek 2010a, pp. 48–117), potentially affecting pollination and dispersal of the plant (Steffan-Dewenter and Tscharntke 1999, p. 437; Menges 1991, pp. 158–164; Jennerston 1988, pp. 359–366; Cunningham 2000, pp. 1149–1152). These indirect effects of the proposed development would remain into the future post-construction.

Under the SCP, Newhall Land Company designated seven spineflower preserves containing 15.4 ac (6.2 ha) of *Chorizanthe parryi* var. *fernandina* occupied area, which is the remaining 76 percent of the Santa Clarita population. The SCP also includes several preserve management actions intended to address indirect effects of the proposed development. Easements and an endowment to manage and monitor the preserves have been put in place; additional management actions have not yet been implemented.

Overall, we conclude that proposed development at one of the two *Chorizanthe parryi* var. *fernandina* populations will result in the loss of 24 percent of the Santa Clarita population in the future. This equates to a loss of 12–14 percent of the plant rangewide. In addition, indirect effects to the remaining 76 percent of the Santa Clarita population (38–44 percent of the plant rangewide) are expected in the future as a result of fragmenting the landscape. This fragmentation would result in edge effects around the remaining occurrences that put these patches at risk and separate them more than they are under current conditions. It is possible that future management actions to ameliorate indirect effects of the development to the 76 percent of the population that would remain within these preserves after development could be implemented and may be effective. However, at this time, we conclude that development is a future population-level threat to the plant as it would result in loss of habitat and individuals, and further reduce the range of this plant, which is already vulnerable due to its small size and isolated populations (Factors A and E).

Small, Isolated Populations

The effects of having small, isolated populations include increased risk of extinction from random, naturally occurring events, and potentially reduced genetic variation, which can affect the ability of a species to sustain itself into the future in the face of environmental fluctuations. There are two known populations of *Chorizanthe parryi* var. *fernandina*, one at Laskey Mesa and one at Santa Clarita, each comprising approximately 15 to 20 ac (6 to 8 ha) of occupied area. The two populations at Laskey Mesa and Santa Clarita comprise the current known range of *C. parryi* var. *fernandina;* the populations are approximately 17 mi (27 km) apart from north to south.

Because there are only two populations of *Chorizanthe parryi* var. *fernandina,* naturally occurring events and other stressors increase the risk of extirpation. Small, highly fragmented populations have a high extinction risk due to isolation (no other populations to "rescue" a declining or extirpated one) and small total population sizes (MacArthur and Wilson 1967, entire), both of which make them more vulnerable, especially to random, naturally occurring events, such as drought and wildfire (Kohlman *et al.* 2005, entire; Soule *et al.* 1992, p. 44).

In addition, lower and reduced genetic variation may make a population less adapted to existing pressures and incapable of adaptation to new stressors (Frankham 1995, entire). Thus, small populations and low genetic diversity can have synergistic effects with respect to population decline, decreasing a species' ability to persist within a changing environment. In all but extreme cases, genetic losses due to drift and inbreeding within populations can be limited by keeping population sizes large relative to their historical sizes (Neel *et al.* 2008, p. 939). In addition, levels of diversity can be enhanced by high rates of gene flow among populations because such gene flow increases effective population size and facilitates exchange of alleles (Neel *et al.* 2008, p. 950). The genetic characteristics of *Chorizanthe parryi* var. *fernandina* have not been investigated; however, Dr. Deborah Rodgers is currently conducting research of *C. parryi* var. *fernandina's* genetic structure and the degree of inbreeding depression (Dudek 2015, p. 2; Dudek 2016c, p. 9). As of January 2016, all field collection is complete and the study is ongoing (D. Rodgers 2016, pers. comm.).

Overall, we conclude that having only two small, isolated populations decreases the ability of *Chorizanthe parryi* var. *fernandina* to sustain itself into the future in the face of environmental fluctuations and random, naturally occurring events. Historically, the plant was known from no less than 10 additional locations across southern California. This stressor will continue to affect *C. parryi* var. *fernandina* and its habitat at both sites into the future. It is possible that additional populations at historically occupied but currently extirpated sites would decrease the risk of having small, isolated populations for *C. parryi* var. *fernandina* into the future. However, at this time, we conclude that having small, isolated populations is a current and future population-level threat to the plant (Factor E).

Nonnative, Invasive Plants

Nonnative, invasive plants include nonnative vegetation that occurs within or adjacent to habitat that supports *Chorizanthe parryi* var. *fernandina*. In particular, we focused on the impacts of nonnative grasses and other fast-invading, nonnative annual plants because they are abundant at both sites and are efficient at displacing native vegetation. Nonnative, invasive grasses historically affected the Laskey Mesa and Santa Clarita populations (GLA 2000, p. 5; Dudek 2010a, pp. 48–51). Past activities (*e.g.*, grazing and other human-induced disturbances) have historically occurred over most of the Upper Las Virgenes Canyon Open Space Preserve area including Laskey Mesa; it is not known whether Laskey Mesa was formerly native grassland, coastal scrub, or a mix of both prior to European contact (Dudek 2010a, p. 21). Historical and existing grazing activities, and other historical land uses, have affected much of the natural habitat at the Santa Clarita site, displacing scrub habitats with annual grasslands (Dudek 2010a, pp. 48–51). Currently, nonnative, invasive grasses are abundant at both the Laskey Mesa and Santa Clarita sites and reduce available habitat; compete with *C. parryi* var. *fernandina* for light, water, and soil nutrients; increase the potential for wildfire; and alter pollinator communities. As of 2015, the vegetation at Laskey Mesa was largely comprised of nonnative grasses, primarily ripgut brome (*Bromus diandrus*), but also several other native and nonnative grasses (notably purple needlegrass (*Nassella pulchra*)) (Cooper 2015, p. 5). At the Santa Clarita site, currently 29 percent of the total species are nonnative within the spineflower preserves (Dudek 2013, p. 13); 11 nonnative species in the grass family (Poaceae) were present (Appendix B of Dudek 2013).

This stressor will continue to affect *Chorizanthe parryi* var. *fernandina* and its habitat at both sites into the future. With no future land use change at the Laskey Mesa population, we do not anticipate the impact of nonnative, invasive plants will become worse than current conditions, given that disturbance is a primary factor that promotes the invasion of nonnative plants (Rejmanek 1996; D'Antonio and Vitousek 1992; Hobbs and Huenneke 1992; Brooks *et al.* 2004; Keeley *et al.* 2005). At the Santa Clarita population, the proposed development of Newhall Ranch would convert areas that currently contain nonnative vegetation to urban areas, thereby reducing the total acreage of nonnative vegetation at this site, but this ground disturbance would also create additional opportunities for nonnative plants to invade urban edges of the spineflower preserves and natural open space. In general, nonnative weedy species are often edge species and become more prevalent or increase in abundance, while rare and sensitive species and species that were once widespread tend to decline (Hilty *et al.* 2006, pp. 42–45).

There are currently no management actions that are occurring to reduce direct or indirect impacts from nonnative, invasive plants. However, we note the following future proposed actions:

(1) We anticipate that the MRCA will address the abundance of nonnative vegetation at Laskey Mesa once the funding becomes available for management; however, to date management actions have not been implemented at this site, and the timeline for management actions is unknown.

(2) Newhall Land Company has proposed to restore habitat for *Chorizanthe parryi* var. *fernandina* at Santa Clarita and implement measures as part of the proposed development of Newhall Ranch to reduce the abundance and impact of nonnative vegetation within the spineflower preserves.

Overall, we conclude that nonnative, invasive plants are abundant at both Laskey Mesa and Santa Clarita populations, reduce available habitat quality, compete with *Chorizanthe parryi* var. *fernandina* for resources, and increase potential for wildfire. This stressor historically affected Laskey Mesa and Santa Clarita populations and will continue to affect *C. parryi* var. *fernandina* and its habitat at both sites into the future. It is likely that future management actions to reduce the presence and impact of nonnative, invasive grasses would be implemented in the future and may be effective. We will further evaluate future conservation measures at such time that Newhall Land Company finalizes supplementing their conservation strategy. However, at this time, we conclude that nonnative, invasive plants are a current and future population-level threat to *C. parryi* var. *fernandina* (loss of individuals) and its habitat (Factors A and E).

Argentine Ants

Argentine ants may impact pollination and seed dispersal vectors of *Chorizanthe parryi* var. *fernandina*. Based on the best available information, Argentine ants have not historically impacted the Laskey Mesa or Santa Clarita populations of *C. parryi* var. *fernandina*. Currently at Laskey Mesa, Argentine ants are present in close proximity to the ranch house and a nearby eucalyptus (*Eucalyptus* spp.) tree, but they were not encountered in areas occupied by *C. parryi* var. *fernandina* because, presumably, the conditions are too dry and thus unsuitable (Sapphos 2000, pp. 6–8). At Santa Clarita, as of February 2016, Argentine ants are present within two spineflower preserves, Entrada and Potrero (Dudek, 2016b, pp. 17, 20), in the Santa Clara River corridor (Dudek 2016b, entire), at Middle Canyon Spring (Dudek 2010a, p. 130), and in the existing utility corridor that runs along the southern portion of the property and through the Entrada Preserve (Dudek 2016b, p. 17). We do not have any information regarding the presence of Argentine ants where *C. parryi* var. *fernandina* occurs outside of the preserves at this site.

At Laskey Mesa, we do not expect Argentine ants will impact *Chorizanthe parryi* var. *fernandina* in the future without a change in land use. At Santa Clarita, Argentine ants already occur and we would expect them to occur within development areas and open areas adjacent to the preserves in the future after development of the proposed Newhall Ranch (Dudek 2010a, p. 130; Dudek 2016b, pp. 4–20). Anthropogenic modifications to the physical environment are preeminent in determining the extent to which Mediterranean scrub communities in southern California are susceptible to invasion by Argentine ants (Holway *et al.* 2002, p. 1617). Invasion of Argentine ants into natural areas from urban areas is a function of moisture, distance from the urban edge, season, and vegetation type (Bolger 2007, p. 303; Suarez *et al.* 1998, pp. 2047–2054; Erickson 1971, p. 264; Human and Gordon 1996, p. 408; Holway 1995, p. 1635; Holway 2005, pp. 563–566; Staubus *et al.* 2015, p. 677). Because Argentine ants are present within two preserves and the Santa Clara River corridor and utility corridor, and because of the proposed development of Newhall Ranch, we anticipate that Argentine ants will be a long-term concern for the persistence of *C. parryi* var. *fernandina* at this site.

Argentine ants can affect *Chorizanthe parryi* var. *fernandina* reproduction by reducing effective pollination, successful seed set, and potentially the degree of heterozygosity of plants. Argentine ants are known to: (1) Displace native epigeic (above-ground) ants (Ward 1987, pp. 13; Human and Gordon 1996, pp. 407–411; Suarez *et al.* 1998, pp. 2047–2054; Holway 2005, pp. 563–566; Holway and Suarez 2006, pp. 321–322; Bolger 2007, pp. 301–303) that act as pollination and seed dispersal vectors for *C. parryi* var. *fernandina*; and (2) reduce floral visits by bees and thus reduce fruit production of plants (*i.e., Calystegia macrostegia* ssp. *macrostegia* (Santa Cruz morning glory) (Hanna 2015, p. 226); *Ferocactus viridescens* (coast barrel cactus) (LeVan and Holway 2014, pp. 167–169)) in areas dominated by Argentine ants. Based on the best available data, maintaining conditions that support both terrestrial and aerial guilds of pollinators is likely required for long-term viability of *C. parryi* var. *fernandina* (Jones *et al.* 2009, p. 39). The loss of effective pollination through reductions in local pollinator abundance and diversity would reduce successful seed set, or if the plant is at least partially self-compatible, would reduce the degree of heterozygosity within plant (Jones *et al.* 2010, p. 165). *C. parryi* var. *fernandina* would have difficulty maintaining long-term viability after a series of poor seed-production years without a natural diversity of pollinators because effective pollinators lead to significant increases in seed set and seed viability (Jones *et al.* 2009, p. 39; for examples of other annual plants, see Steffan-Dewenter and Tscharntke 1999, entire; Jennersten 1988, entire).

Newhall Land Company incorporated buffers of varying widths in the SCP and proposes to maintain the current hydrology within the spineflower preserves (Dudek 2010a, pp. 15, 125–129) to reduce the potential invasion of Argentine ants into the preserves. Abiotic conditions (*e.g.,* soil moisture) and proximity to human development are primarily responsible for the rate of Argentine ant invasions (Suarez *et al.* 1998, pp. 2047–2054). Buffers between natural areas and urbanization have been suggested to decrease the likelihood of Argentine ant invasion. According to the best scientific information, the varying widths of the buffers around the spineflower preserves in the SCP are less than what is recommended to preclude Argentine ant invasion at urban edges and the proposed water control measures range from moderately to highly effective (Conservation Biology Institute 2000, p. 21; Dudek 2010b, p. 4.5–1770). Newhall Land Company proposes to utilize control methods if Argentine ants are observed in the preserves. The proposed Argentine ant control measures in the SCP and AACP could negatively impact other arthropods that are beneficial to *Chorizanthe parryi* var. *fernandina,* may not be applicable to controlling invasion into preserves (Gilboa *et al.* 2012, entire; Enzmann *et al.* 2012, entire) such as those at Santa Clarita, or are only recommended in closed systems where reintroduction of Argentine ants can be actively withheld (Enriquez Leni 2012, p. 55). The impacts to *C. parryi* var. *fernandina* from Argentine ants are likely to increase at Santa Clarita with the proposed development of Newhall Ranch.

Overall, Argentine ants can directly impact pollinators and reduce effective pollination, reduce successful seed set, and may reduce the degree of heterozygosity of plants. Argentine ant invasion into the spineflower preserves is likely to displace native epigeic ants that are known pollinators and seed dispersers of *Chorizanthe parryi* var. *fernandina*. Similarly, non-ant arthropods that are known pollinators (*e.g.,* honeybees) are likely to be negatively impacted by the presence of Argentine ants in the preserves. Conservation of conditions that support both guilds of pollinators is likely required for long-term viability of *C. parryi* var. *fernandina*. This stressor has not historically impacted *C. parryi* var. *fernandina* at either population. We do not anticipate an impact from Argentine ants at Laskey Mesa because there is no future land use change. At Santa Clarita, Argentine ants currently occur within two preserves (Entrada and Potrero), and the Santa Clara River corridor that connects six of the seven preserves. Argentine ants will occur adjacent to the preserves in the future post-development, and it is likely that Argentine ants will occur in other preserves in the future. It is likely that future management actions to reduce the presence and impact of Argentine ants at Santa Clarita would be implemented. Proposed actions to control Argentine ants have not been shown to be effective without negatively affecting native species that are important for *C. parryi* var. *fernandina* reproduction. We will further evaluate future conservation measures aimed at controlling Argentine ants at such time that Newhall Land Company finalizes supplementing their conservation strategy. However, at this time, we conclude that Argentine ants are a current and future population-level threat to *C. parryi* var. *fernandina* (loss of individuals) (Factor E).

Climate Change

The term "climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2014, p. 119). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (for example, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2014, p. 120). A recent synthesis report of climate change and its effects is available from the Intergovernmental Panel on Climate Change (IPCC) (IPCC 2014, entire).

Global climate projections are informative, and in some cases, the only scientific information available. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (*e.g.,* IPCC 2007, pp. 8–12). For this analysis across the two populations of *Chorizanthe parryi* var. *fernandina,* we used a projection tool called ClimateWizard (2015) to estimate what changes in rainfall and temperature, if any, would occur in the region that includes the Santa Clarita and Laskey Mesa populations over the next 50 years. ClimateWizard (2015) is useful in projecting future climate conditions and to compare the projections to baseline values (the latter of which is defined as the average temperature or precipitation between 1961 and 1990 (ClimateWizard 2015)).

There is no way to measure past impacts at either population associated with climate change. Compared to historical/baseline temperature and precipitation measurements, projections of climate change in the south coast region of California indicate that precipitation will decrease slightly and temperature will slightly increase by mid-century. The response of *Chorizanthe parryi* var. *fernandina* may be similar to other plant species with a similar life history. A growing body of literature discusses the specific mechanisms by which climate change could affect the abundance, distribution, and long-term viability of plant species, as well as current habitat configuration over time, including, but not limited to: Root *et al.* (2003), Parmesan and Yohe (2003), and Visser and Both (2005). Some of the responses by plants to climate change presented by these studies and others include the following:

1. Drier conditions may result in less suitable habitat, or a lower germination success and smaller population sizes;
2. Higher temperatures may inhibit germination, dry out soil, or affect pollinator services;
3. The timing of pollinator life cycles may become out-of-sync with timing of flowering;
4. A shift in the timing and nature of annual precipitation may favor expansion in abundance and distribution of nonnative species; and
5. Drier conditions may result in increased fire frequency, making the ecosystems in which a species currently grows more vulnerable to threats of nonnative plant invasion.

Overall, although many climate models generally agree about potential future changes in temperature and precipitation, their consequent effects on vegetation are more uncertain, as is the rate at which any such changes might be realized. It is not clear how or when changes in vegetation type or plant species composition will affect the distribution of *Chorizanthe parryi* var. *fernandina.* Therefore, uncertainty exists when determining the level of impact climate change may have on *C. parryi* var. *fernandina* or its habitat. Compared to historical/baseline temperature and precipitation measurements, projections of climate change in the south coast region of California indicate that precipitation will decrease slightly and temperature will slightly increase by mid-century. But at this time and based on the analysis in the Species Report (Service 2016, pp. 73–78) and summarized above, we do not have reliable information to indicate that climate change is a threat to *C. parryi* var. *fernandina* habitat now or in the future, although we will continue to seek additional information concerning how climate change may affect the plant and its habitat (Factors A and E).

Synergistic Effects

When stressors occur together, one stressor may exacerbate the effects of another stressor, causing effects not accounted for when stressors are analyzed individually. Synergistic effects may be observed in a short amount of time or may not be noticeable for years into the future, and could affect the long-term viability of *Chorizanthe parryi* var. *fernandina.* Stressors that could act synergistically on *C. parryi* var. *fernandina* include development; having small, isolated populations; nonnative, invasive plants; Argentine ants; wildfire, and potentially climate change. At the Laskey Mesa site, the presence of nonnative, invasive grasses increases the frequency of wildfire, which in turn creates more open area for nonnative, invasive plants to grow that are more likely to ignite and carry fire than native vegetation (Keeley *et al.* 2005, p. 2123). At the Santa Clarita site, the future development of Newhall Ranch would directly remove 24 percent of the *C. parryi* var. *fernandina* population, fragmenting the habitat between the occurrences of *C. parryi* var. *fernandina,* which will create edge effects around remaining occurrences within the spineflower preserves, and increase the risk of invasion of Argentine ants and nonnative, invasive plants. In general, invasive species are often edge species and become more prevalent or increase in abundance, while rare and sensitive species and species that were once widespread tend to decline (Hilty *et al.* 2006, pp. 42–45). In addition, the potential loss of habitat and conditions that support growth of *C. parryi* var. *fernandina* due to climate change can work in combination with and exacerbate the effects of all other stressors, such as increasing the frequency or intensity of wildfire and increasing the spread of nonnative, invasive plants and animals. When considered together, the impact of these stressors has the potential to be high. Even though the impact of each of these stressors may be low to moderate under current conditions, the proposed development of Newhall Ranch, which would occur over the next 25 years, will likely exacerbate the impact of the stressors while confining the *C. parryi* var. *fernandina* population at this site to small patches of suitable habitat adjacent to and bordered by urban development. Long-term future impacts may increase synergistic effects, and it is unknown if *C. parryi* var. *fernandina* will be able to adapt to the potential synergistic effect of stressors.

Resiliency, Representation, and Redundancy

We use the principles of resiliency, representation, and redundancy as a lens to evaluate current and future effects to *Chorizanthe parryi* var. *fernandina.* Resiliency refers to the capacity of an ecosystem, population, or organism to recover quickly from disturbance by tolerating or adapting to changes or effects caused by a disturbance or a combination of disturbances. The degree of resiliency of a species is influenced by the health of the populations, including number of individuals, genetic diversity, and habitat quality. Resiliency increases with a higher number of individuals, increasing genetic diversity, or better habitat quality; it decreases with fewer individuals, less genetic diversity, or lowered habitat quality. In the case of *Chorizanthe parryi* var. *fernandina,* the number of individuals can fluctuate annually by orders of magnitude (GLA 2000; Sapphos 2000, 2001; Dudek 2010a; Cooper 2015; Dudek 2002–2007, 2010, 2011–2014). The genetic characteristics of *C. parryi* var. *fernandina* have not been investigated; however, Dr. Deborah Rodgers is currently conducting research into *C. parryi* var. *fernandina's* genetic structure and the degree of inbreeding depression (Dudek 2015, p. 2; Dudek 2016c, p. 9). Habitat quality for *C. parryi* var. *fernandina* at the Santa Clarita population would be affected by fragmentation from the proposed Newhall Ranch development, which would result in edge effects, such as increasing the risk of invasion of nonnative, invasive plants and animals. Occurrences of *C. parryi* var. *fernandina* and its habitat would be more separated than current conditions because occurrences that connect, or are intermittent between, the larger concentrations of *C. parryi* var. *fernandina* within the designated preserves would be lost to development, potentially affecting pollination and dispersal of the plant. Highly fragmented populations have an increased extinction risk due to isolation because they are less likely to be repopulated or supplemented by nearby populations, which makes them more vulnerable, especially to random, naturally occurring events such as drought and wildfire (Kohlman *et al.* 2005, entire; Soule *et al.* 1992, p. 44). Reducing resiliency by decreasing habitat quality at the Santa Clarita population increases the overall risk to the plant from disturbance or a combination of disturbances. The best scientific and commercial information available indicates that there are current and future stressors acting upon *C. parryi* var. *fernandina* populations such that we anticipate impacts to its overall resiliency in the future.

Redundancy refers to the ability of a species to compensate for fluctuations in or loss of populations across the species' range such that the loss of a single population has little or no lasting effect on the structure and functioning of the species as a whole. Multiple interacting populations across a broad geographic area provide insurance against the risk of extinction caused by catastrophic events. Because historically there were no fewer than 10 additional populations across Los Angeles and Orange Counties in Southern California, redundancy is decreased for *Chorizanthe parryi* var. *fernandina.* If either of the two extant populations were permanently lost, the redundancy of *C. parryi* var. *fernandina* would be further lowered, thereby decreasing the plant chance of survival in the face of potential environmental or demographic stochastic factors and catastrophic events (*e.g.,* wildfire, extreme drought). We conclude that there is not sufficient redundancy at present to sustain *C. parryi* var. *fernandina* over the long term, given current and future stressors acting upon the population.

Representation refers to a species' ability to adapt to changing environmental conditions related to distribution within the species' ecological settings. Representation is characterized by the breadth of genetic and environmental diversity within and among populations. The level of genetic divergence among the areas where *Chorizanthe parryi* var. *fernandina* grows is unknown. However, occupied area across multiple populations increases the probability of demographic persistence and preservation of overall genetic diversity by providing a larger genetic reservoir. Historically, there were no fewer than 10 *C. parryi* var. *fernandina* populations across southern California, representing at least five level IV ecoregions of the conterminous United States. Ecoregions denote areas of general similarity in ecosystems through analysis of patterns of biotic and abiotic phenomena, including geology, physiography, vegetation, climate, soils, land use, wildlife, and hydrology; level IV is the finest ecoregion level developed by the Environmental Protection Agency (Environmental Protection Agency 2016; *https://catalog.data.gov/dataset/level-iv-ecoregions-of-california*). Currently, there are only two *C. parryi* var. *fernandina* populations, 17 mi (27 km) apart, representing only one level IV ecoregion. Therefore, we conclude that representation across different ecological settings for *C. parryi* var. *fernandina* is reduced, decreasing the ability of the plant to adapt to changing environmental conditions into the future, which increases the risk of future extirpation of the plant.

Overall, redundancy and representation are currently reduced and resiliency is likely to decrease in the future, bringing into question whether *Chorizanthe parryi* var. *fernandina* can sustain itself in the face of environmental fluctuations and random, naturally occurring events. Fragmentation of the Santa Clarita population is likely to decrease habitat quality, reducing resiliency at this population and increasing the overall risk to the plant from random, naturally occurring events. With only two populations, there may not be sufficient redundancy to sustain *C. parryi* var. *fernandina* over the long term, given current and future stressors acting upon the populations. Currently, the two *C. parryi* var. *fernandina* populations represent only one level IV ecoregion, down from five, decreasing the ability of the plant to adapt to changing environmental conditions into the future. At this time, we conclude that there may not be sufficient resiliency, representation, or redundancy to sustain *C. parryi* var. *fernandina* over the long term, given current and future stressors acting upon the plant.

Please refer to the Potential Stressors section in the San Fernando Valley Spineflower (*Chorizanthe parryi* var. *fernandina)* Species Report (Service 2016, pp. 20–78) for a more detailed discussion of our evaluation of the biological status of the plant and the factors that may affect its continued existence. Our conclusions are based upon the best available scientific and commercial data.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. This document constitutes the Service's 90-day and 12-month findings on the December 6, 1999, and January 27, 2000, petitions to list *Chorizanthe parryi* var. *fernandina* under the Act as an endangered species.

Based on our review of the best scientific and commercial information available, we find that the current threats are of sufficient imminence, intensity, or magnitude to indicate that *Chorizanthe parryi* var. *fernandina* is likely to become an endangered species within the foreseeable future throughout all of its range (threatened). We have determined that *C. parryi* var. *fernandina* warrants listing based on two of the five factors (Factors A and E), including historical and future loss of habitat and individuals from development (Factors A and E); having small, isolated populations (Factor E); presence of invasive, nonnative plants (Factors A and E); proliferation of Argentine ants (Factor E); and potentially climate change (Factors A and E).

The Laskey Mesa population is currently affected by nonnative, invasive grasses (Factors A and E), being one of two small, isolated populations (Factor E), and potentially by climate change (Factors A and E). Past land-use activities (*e.g.*, grazing and other human-induced disturbances), which have historically occurred over most of the Upper Las Virgenes Canyon Open Space Preserve area including Laskey Mesa, have greatly modified the vegetation and replaced many native plant habitats into nonnative annual grasslands (GLA 2000, p. 5). Nonnative, invasive grasses are currently reducing available habitat for *Chorizanthe parryi* var. *fernandina* throughout this population and degrading the overall quality of the habitat, although this impact may decrease in the future when management is implemented.

The Santa Clarita population is currently affected by nonnative, invasive grasses (Factors A and E); Argentine ants (Factor E); being one of two small, isolated populations (Factor E); and potentially by climate change (Factors A and E). The impacts of nonnative grasses occur throughout the entire population at this site, although this impact may decrease in the future when management is implemented. Argentine ants are currently present within at least two spineflower preserves (Entrada and Potrero), and within the Santa Clara River corridor. The invasion of Argentine ants into the preserves is likely to displace or negatively affect arthropods, including known *Chorizanthe parryi* var. *fernandina* pollinators (*e.g.*, epigeic ants, beetles (Coleoptera), flies (Diptera), honeybees) and seed dispersers (*e.g.*, harvester ants), reducing the natural diversity of pollinators and dispersers, which is expected in turn to decrease the long-term viability of *C. parryi* var. *fernandina* after a series of poor seed-production years.

The Santa Clarita population will also be affected in the future by the proposed Newhall Ranch development project (Factors A and E). The development of Newhall Ranch will remove 24 percent of the *Chorizanthe parryi* var. *fernandina* population at this site, resulting in loss of individuals and habitat. The resulting fragmentation could increase impacts of random, naturally occurring events and result in loss of genetic variation. In addition, edge effects include increased risk of invasion of nonnative plants (Factors A and E) and Argentine ants (Factor E). Argentine ants will likely occur adjacent to the preserves in the future post-development, and it is likely that Argentine ants will occur in other preserves that are currently free of Argentine ants in the future.

Population size, distribution, and diversity can be an indicator of whether a species can sustain itself into the future in the face of environmental fluctuations and natural, randomly occurring events. Decreased resiliency at the Santa Clarita population due to habitat fragmentation from the proposed Newhall Ranch development would increase the overall risk to the plant from disturbance or a combination of disturbances. With only two populations, *Chorizanthe parryi* var. *fernandina* exhibits low redundancy at present, which may be insufficient to sustain the plant over the long term, given current and future stressors acting upon the populations. Historically *C. parryi* var. *fernandina* populations across southern California represented at least five level IV ecoregions; currently, the two *C. parryi* var. *fernandina* populations represent only one level IV ecoregion, decreasing the ability of the plant to adapt to changing environmental conditions into the future. At this time, we conclude that there may not be sufficient resiliency, redundancy, or representation to sustain *C. parryi* var. *fernandina* over the long term, given current and future stressors acting upon the populations.

The Act defines the term "species" as includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that *Chorizanthe parryi* var. *fernandina* is likely to become endangered throughout all or a significant portion of its range within the foreseeable future based on the current and future threats to the plant. The plants' historical range has been significantly reduced, and the remaining habitat and two populations are significantly and currently impacted by multiple threats at the population or rangewide scale. Therefore, on the basis of the best available scientific and commercial information, we propose listing *C. parryi* var. *fernandina* as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

The threats associated with indirect effects to the Santa Clarita population from the Newhall Ranch proposed development (*e.g.*, fragmentation and edge effects) are expected in the future. Fragmentation would separate *Chorizanthe parryi* var. *fernandina* occurrences more than current conditions, potentially reducing pollination and dispersal, and result in edge effects around the remaining post-development occurrences, including an increase in nonnative plants and Argentine ants. Because these are future threats, we have determined that *C. parryi* var. *fernandina* is not currently in danger of extinction and thus does not meet the definition of "endangered." Rather, these threats are likely to occur in the foreseeable future such that the plant is likely to become endangered throughout all or a significant portion of its range within the foreseeable future, which is the definition of a threatened species.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that *Chorizanthe parryi* var. *fernandina* is threatened throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Completed recovery plans may be revised to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria to evaluate when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. If we list *Chorizanthe parryi* var. *fernandina*, the recovery outline, draft recovery plan, and the final recovery plan for the plant will be available on our Web site (*http://www.fws.gov/endangered*), or from our Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If *Chorizanthe parryi* var. *fernandina* is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California would be eligible for Federal funds to implement management actions that promote the protection or recovery of *C. parryi* var. *fernandina*. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although *Chorizanthe parryi* var. *fernandina* is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this plant. Additionally, we invite you to submit any new information on this plant whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the plants' habitat that may require conference or consultation or both under section 7 of the Act as described in the preceding paragraph include, but are not limited to, management and any other landscape-altering activities on Federal lands and activities on non-Federal lands that require the issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened plants. With regard to threatened plants, 50 CFR 17.71 provides that all of the prohibitions in 50 CFR 17.61 applicable to endangered plants apply to threatened plants, with one exception. Thus, the regulations at 50 CFR 17.71(a) make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction any threatened plant. There is an exception for the seeds of cultivated specimens, provided that a statement that the seeds are of "cultivated origin" accompanies the seeds or their container. The Service concludes that the following activities would not result in violation of section 9 (this list is not comprehensive): Activities on private land such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions. Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat for Chorizanthe parryi var. fernandina

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are

found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat to *Chorizanthe parryi* var. *fernandina* from collection or vandalism under Factor B, and identification and mapping of critical habitat is not likely to increase any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of designation include: (1) Triggering consultation under section 7 of the Act in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the plant. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to *C. parryi* var. *fernandina* and may provide some measure of benefit, we find that designation of critical habitat is prudent for *C. parryi* var. *fernandina.*

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist: (i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

As discussed above, we have reviewed the available information pertaining to the biological needs of *Chorizanthe parryi* var. *fernandina* and habitat characteristics where this plant is located. On the basis of a review of available information, we find that critical habitat for *C. parryi* var. *fernandina* is not determinable because the specific information sufficient to perform the required analysis of the impacts of the designation is currently lacking. We will make a determination on critical habitat no later than 1 year following any final listing determination.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available in the San Fernando Valley Spineflower (*Chorizanthe parryi* var. *fernandina)* Species Report available at *http://www.regulations.gov* and upon request from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Ventura Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12 paragraph (h) by adding an entry for "*Chorizanthe parryi* var. *fernandina*" to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* * * * * * *				
Chorizanthe parryi var. *fernandina*.	San Fernando Valley spineflower.	Wherever found	T	[*Insert* ***Federal Register*** *citation when published as a final rule*]
* * * * * * *				

Dated: August 30, 2016.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–22167 Filed 9–14–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 81, No. 179
Thursday, September 15, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Bridger-Teton Resource Advisory Committee (RAC) will meet in Kemmerer, Wyoming and Afton, Wyoming. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/btnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on September 26, 2016, at 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Lincoln County Courthouse, 925 Sage Avenue, Suite 301, Kemmerer, Wyoming; and the Lincoln County Branch Office, Conference Room, 421 Jefferson Avenue, Afton, Wyoming. The public is welcome to attend in person or via teleconference. For anyone who would like to attend via teleconference, please visit the Web site listed in the **SUMMARY** section or please contact the person listed under **FOR FURTHER INFORMATION.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Kemmerer Ranger District. Please call ahead at 307–828–5110 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Adriene Holcomb, District Ranger by phone at 307–828–5110, or via email at *aholcomb@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and authorize projects under Title II of the Act.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 14, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Adriene Holcomb, District Ranger, 308 US Highway 189, Kemmerer, Wyoming 83101; by email to *aholcomb@fs.fed.us,* or via facsimile to 307–828–5135.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: September 9, 2016.

Adriene Holcomb,

District Ranger.

[FR Doc. 2016–22176 Filed 9–14–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pike/San Isabel National Forests; Colorado; Pike/San Isabel National Forests Travel Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of Public Scoping Comment Period Extension for Pike/San Isabel National Forests Travel Management Plan.

SUMMARY: A Notice of Intent to Prepare an Environmental Impact Statement (EIS) announcing the Pike/San Isabel National Forests opening of their Travel Management Planning process 45 day public scoping comment period and public scoping meetings was published in the **Federal Register** on July 25, 2016 and available at the following link: *https://www.federalregister.gov/articles/2016/07/25/2016-17498/pikesan-isabel-national-forests-colorado-pikesan-isabel-national-forests-travel-management-plan.*

The EIS scoping comment period was scheduled to end on September 8, 2016. This notice extends the comment period an additional 15 days to Friday, September 23, 2016. Project proposed action, purpose and need, alternatives and opportunities to comment are available at *http://www.psitravelmanagement.org/.*

ADDRESSES: Written comments concerning this notice should be addressed to Travel Management, Pike/San Isabel National Forests, 2840 Kachina Dr., Pueblo, CO 81008. Comments may also be sent via email to *comments@psitravelmanagement.org,* or via facsimile to 719–553–1440, with "PSI Travel Management" in the subject line. Comments must be readable in Microsoft Word, rich text or pdf formats.

All comments, including names and addresses when provided, are placed in the record and will be available for public inspection and copying. The public may inspect comments after they are received and summarized at the travel planning Web page at: *www.psitravelmanagement.org.*

FOR FURTHER INFORMATION CONTACT: John Dow, Forest Planner at 719–553–1476. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Responsible Official

The Responsible Official is Erin Connelly, Forest and Grassland Supervisor, Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, 2840 Kachina Dr., Pueblo CO 81008.

Dated: September 8, 2016.

Erin Connelly,

Forest and Grassland Supervisor, Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands.

[FR Doc. 2016–22185 Filed 9–14–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Delaware State Advisory Committee to the Commission will convene by conference call at 1:00 p.m. (EST) a planning meeting on the following dates: Wednesday, September 28, 2016; Wednesday, October 19, 2016; Wednesday, November 16, 2016; Wednesday, December 21, 2016; Wednesday, January, 18, 2017 and Wednesday, February 15, 2017. The purpose of each planning meeting is to discuss project planning as the Committee moves to selecting a topic as its civil rights project. The Committee will also select additional officers, as necessary.

DATES: The following dates: Wednesday, September 28, 2016; Wednesday, October 19, 2016; Wednesday, November 16, 2016; Wednesday, December 21, 2016; Wednesday, January, 18, 2017 and Wednesday, February 15, 2017.

TIME: Each meeting starts at 1:00 p.m. (EST).

PUBLIC CALL-IN INFORMATION: Conference call number: 1–888–224–1065 and conference call ID: 8667527.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–224–1065 and conference call ID: 8667527. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call number: 1–888–224–1065 and conference call ID: 8667527.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=240;* click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

I. Welcome and Introductions
   Rollcall
II. Planning Meeting
   Discuss project planning.
III. Other Business
IV. Adjournment

Dated: September 12, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–22196 Filed 9–14–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the West Virginia State Advisory Committee to the Commission (MD State Advisory Committee) will convene by conference call at 12 p.m. (EST) on Friday, October 7, 2016. The purpose of planning meeting is to discuss project planning regarding the closeout of the Mental Health Project and topics for the Committee's future civil rights review.

DATES: Friday, October 7, 2016, at 12 p.m. (EST).

ADDRESSES: Public call-in information: Conference call-in number: 1–888–601–3861 and conference call ID: 636552.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–601–3861 and conference call ID: 636552. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–888–601–3861 and conference call ID: 636552.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC

20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=281;* click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

I. Welcome and Introductions
  Rollcall
II. Planning Meeting
  Discuss Mental Health Project and
    Other Topics for Civil Right Project
III. Other Business
IV. Adjournment

Dated: September 12, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–22197 Filed 9–14–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2016]

Foreign-Trade Zone (FTZ) 46G—Cincinnati, Ohio, Notification of Proposed Production Activity, Givaudan Flavors Corporation, (Flavor Products), Cincinnati, Ohio

Givaudan Flavors Corporation (Givaudan) submitted a notification of proposed production activity to the FTZ Board for its facility in Cincinnati, Ohio within Subzone 46G. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 25, 2016.

The Givaudan facility is used for the production of flavor compounds. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Givaudan from customs duty payments on the foreign status components used in export production. On its domestic sales, for the foreign status components in the existing scope of authority, Givaudan would be able to choose the duty rates during customs entry procedures that apply to food articles containing sugar, other cyclanes, cyclenes and cycloterpenes, other cyclic hydrocarbons, acyclic terpene alcohols, butanoic acids, pentanoic acids, their salts and esters, citrus oil blends, aqueous distillates and aqueous solutions of essential oils, and terpenic by-products of the deterpenation of essential oils (duty rate ranges from free to 6.4%). Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 25, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: September 6, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–22095 Filed 9–14–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the Second Five-Year Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 1, 2016, the Department of Commerce ("Department") initiated the second sunset review of certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). The Department determined that it was appropriate to conduct a full review. The Department preliminarily finds that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Preliminary Results of Review" section of this notice.

DATES: Effective September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–6905.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2016, the Department of Commerce ("Department") initiated the second sunset review of certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam") in accordance with section 751(c) of the Act.[1] The Department received notices of intent to participate from domestic interested parties, the Ad Hoc Shrimp Trade Action Committee ("AHSTAC"), and the American Shrimp Processors Association ("ASPA"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

The Department received substantive responses from domestic interested parties (AHSTAC and ASPA) and respondent interested parties (collectively "Vietnamese Respondents") within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On April 21, 2016, the Department determined that Vietnamese Respondents accounted for more than 50 percent of exports by volume of the subject merchandise and, therefore, submitted an adequate substantive response.[2] The Department also determined that domestic interested parties submitted an adequate response pursuant to 19 CRF 351.218(e)(1)(i). In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order.

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.

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[1] *See Initiation of Five-Year ("Sunset") Review,* 81 FR 10578 (March 1, 2016) ("*Initiation*").

[2] *See* Memorandum to the File, from Irene Gorelik, Senior Analyst, Office V, re: "Adequacy Determination in Antidumping Duty Second Sunset Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated April 21, 2016.

The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, available in the Prelim Decision Memo, remains dispositive.[3]

Analysis of Comments Received

All issues raised for the preliminary results of this sunset review are addressed in the Preliminary Decision Memorandum, dated concurrently with this notice. The issues discussed in the Preliminary Decision Memorandum are the likelihood of continuation or recurrence of dumping, and the magnitude of the margins of dumping likely to prevail if these orders were revoked. The Preliminary Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Pursuant to section 752(c) of the Act, we determine that revocation of the antidumping duty order on certain frozen warmwater shrimp from Vietnam would be likely to lead to continuation or recurrence of dumping at weighted average margins up to 25.76 percent.

Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results of this full sunset review, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing case briefs in accordance with 19 CFR 351.309(d). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). A hearing, if requested, will be held two days after the date the rebuttal briefs are due. The Department will issue a notice of final results of this full sunset review, which will include the results of its analysis of issues raised in any such comments, no later than January 25, 2017.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(f)(1).

Dated: September 9, 2016.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. History of the Order
3. Background
4. Scope of the Order
5. Discussion of the Issues
   a. Legal Framework
   b. Likelihood of Continuation of Recurrence of Dumping
   c. Magnitude of the Margin Likely to Prevail
6. Recommendation

[FR Doc. 2016–22224 Filed 9–14–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE881

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Data Scoping Webinar for South Atlantic Red Grouper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 53 Assessment Scoping and Assessment Webinars.

SUMMARY: The SEDAR 53 assessment of the South Atlantic stock of *red grouper* will consist of a series Webinars.

DATES: The SEDAR 53 Assessment Scoping Webinar will be held on Wednesday, October 12, 2016, from 9 a.m. to 12 p.m. The Assessment Webinars will begin at 1 p.m. on Wednesday, November 30, 2016, recess at 4 p.m. or when business is complete; and reconvene at 1 p.m. on Wednesday, January 11, 2017, and adjourn by 4 p.m. or when business is complete. To view the agenda, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting Address: The Webinars are open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see Contact Information below) to request an invitation providing Webinar access information. Please request Webinar invitations at least 24 hours in advance of each Webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405. *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION:

Agenda

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. The product of the SEDAR Webinar series will be a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

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[3] For a complete description of the Scope of the Order, *see* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: "Issues and Decision Memorandum for the Preliminary Results of Second Sunset Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated concurrently with this notice ("Preliminary Decision Memorandum").

The items of discussion in the Data Scoping Webinar are as follows:

1. Participants will review data and discuss data issues, as necessary, and initial model issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least ten business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 12, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–22181 Filed 9–14–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before October 17, 2016.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0005. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0005 found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://www.RegInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Amanda Olear, Associate Director, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5283; email: *aolear@cftc.gov,* and refer to OMB Control No. 3038–0005.

SUPPLEMENTARY INFORMATION:

Title: "Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants (OMB Control No. 3038–0005). This is a request for extension of a currently approved information collection.

Abstract: Pursuant to the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Public Law 111–203, 124 Stat. 1376 (2010), the Commission promulgated rules and forms relating to registration and compliance with the Commission regulations applicable to intermediaries, and employees and principals thereof, operating in the futures, options, swaps, and retail forex markets. As part of the Commission's rulemaking effort, the Commission amended the compliance regime for Commodity Pool Operators, which is part of a previously approved information collection, through the adoption of a compliance regime applicable to Commodity Pool Operators of Registered Investment Companies, 78 FR 52308 (Aug. 22, 2013).

The disclosure, filing, and recordkeeping requirements within part 4 of the Commission's regulations were established to assist customers, to facilitate the Commission and the National Futures Association ("NFA") in monitoring compliance with the part 4 rules, and to enable the Commission to better monitor the market risks posed by the Commission's registrants. The information collections are necessary to enable the Commission and NFA to accomplish the purposes of the compliance regime set forth in part 4 enumerated above.

The Commission did not receive any comments on the 60-day **Federal Register** notice, 81 FR 42668, dated June, 30, 2016.

Burden Statement: The Commission is revising its estimate of the burden for this collection for Commodity Pool Operators and Commodity Trading Advisors to account for mathematical errors in the previous estimates for this information collection. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 45,270.

Estimated Average Burden Hours per Respondent: 8.08.[1]

Estimated Total Annual Burden Hours: 365,730.

Frequency of Collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection related to the generation of the required information and the submission of the same to the Commission.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September 12, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–22199 Filed 9–14–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0091]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

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[1] This has been rounded up slightly from 8.07886.

SUMMARY: Pursuant to the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Defense Logistics Agency (DLA) proposes to alter a system of records, S375.80, entitled "DLA Telework Program Records" last published at 78 FR 17384, March 21, 2013. The system of records exists to administer the DLA Alternate Worksite/Telework program. Information on participation in the Telework Program, minus personal identifiers, is provided in management reports and to the DoD for a consolidated response to the Office of Personnel Management (OPM) annual data call. Portions of the records are also used to validate and reimburse participants for costs associated with telephone and Internet usage.

This update reflects considerable administrative changes that in sum warrant an alteration to the systems of records notice. The applicable DoD Routine Uses have been incorporated in the notice to provide clarity for the public. Additionally, the categories of individuals has been updated to clearly identify the population of individuals who are included in the system of records and the categories of records has been updated to better define the information collected in the records. There are also modifications to system name, system location, authority, purpose, storage, retrievability, safeguards, retention and disposal, system manager(s) and address, notification procedure, record access procedures, and record source categories.

DATES: Comments will be accepted on or before October 17, 2016. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick, Chief FOIA and Privacy Officer, DLA/FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on August 26, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: September 12, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S375.80

SYSTEM NAME:

DLA Telework Program Records (March 21, 2013, 78 FR 17384)

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Defense Logistics Agency (DLA) Alternate Worksite/Telework Records."

SYSTEM LOCATION:

Delete entry and replace with "Office of the Director, Human Resources, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3527, Fort Belvoir, VA 22060–6221, and DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Current DLA civilian employees having a DLA alternate worksite/telework record and former DLA civilian employees who have left the agency where the DLA alternate worksite/telework record was part of a personnel action."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records include individual's name; DoD ID number; position title, grade, and job series; last performance evaluation rating; duty station address and telephone number; approved telework address, telephone number(s), DLA telework request forms (DLA Telework Request and Approval Form, Telework Agreement, Self-Certification Home Safety Checklist, and Supervisor-Employee Checklist); approvals/disapprovals; description of government owned equipment and software provided to the teleworker; employee telework eligibility code, position telework eligibility code, telework employee training record, and position description number."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. Ch. 65, Telework; DoD Instruction 1035.01, Telework Policy; and Defense Logistics Agency Instruction 7212, DLA Telework Program."

PURPOSE(S):

Delete entry and replace with "Information is used by supervisors, program coordinators, DLA Information Operations and DLA Human Resources Services, Human Resources Information Systems for managing, evaluating, and reporting DLA Alternate Worksite/Telework Record activity/participation. Information on participation in the Telework Program, minus personal identifiers, is provided in management reports and to the DoD for a consolidated response to the Office of Personnel Management (OPM) annual data call.

Portions of the records are also used to validate and reimburse participants for costs associated with telephone and internet usage."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

To the Department of Labor when an employee is injured while teleworking, *e.g.,* details of the telework arrangement may be disclosed.

To DLA-affiliated unions to provide raw statistical data on the program. Disclosed information may include number of positions designated as eligible for telework by job title, series and grade; number of employees requesting telework; number approved for telework by the local activity. No personal identifiers or personally identifying data is provided.

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure to the Merit Systems Protection Board Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel, for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; and administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Delete entry and replace with "Electronic storage media and paper records."

RETRIEVABILITY:

Delete entry and replace with "Records are retrieved by employee's full name or DoD ID Number."

SAFEGUARDS:

Delete entry and replace with "Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to computerized data is restricted by passwords, which are changed periodically or by Common Access Cards (CACs). Access to records is limited to person(s) responsible for servicing the records in the performance of their official duties and who are properly screened and cleared for need-to-know. Individuals granted access to this system of records are required to have Information Assurance and Privacy Act training.

Paper records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours."

RETENTION AND DISPOSAL:

Delete entry and replace with "Destroy approved request 1 year after end of employee's participation in the program. Destroy disapproved request 1 year after request is rejected. Destroy other generated records when 1 year old, or when no longer needed, whichever is later."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Office of the Director, Human Resources, Headquarters, Defense Logistics Agency (DLA), 8725 John J. Kingman Road, Suite 3527, Fort Belvoir, VA 22060–6221."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name and the DLA facility/activity where employee requested to participate in the DLA Telework Program.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If an unsworn declaration is executed outside the United States, it shall read 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'"

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name and the DLA facility/activity where employee requested to participate in the DLA Telework Program.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If an unsworn declaration is executed outside the United States, it shall read 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).' "

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is supplied by the record subject, supervisors, and information technology offices, including automated Human Resources and timekeeping systems."

* * * * *

[FR Doc. 2016–22236 Filed 9–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Meeting of the Chief of Engineers Environmental Advisory Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Chief of Engineers, Environmental Advisory Board (EAB). This meeting is open to the public. For additional information about the EAB, please visit the committee's Web site at *http://www.usace.army.mil/Missions/Environmental/EnvironmentalAdvisoryBoard.aspx.*

DATES: The meeting will be held from 9:00 a.m. to 12:00 p.m. on October 18, 2016. Public registration will begin at 8:30 a.m.

ADDRESSES: The EAB meeting will be conducted at The Sheraton Pittsburgh Hotel at Station Square; 300 W. Station Square Dr.; Pittsburgh, PA 15219; (412) 261–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Mindy M. Simmons, the Designated Federal Officer (DFO) for the committee, in writing at U.S. Army Corps of Engineers, ATTN: CECW–P, 441 G St. NW.; Washington, DC 20314; by telephone at 202–761–4127; and by email at *Mindy.M.Simmons@usace.army.mil.* Alternatively, contact Ms. Anne Cann, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–7166; and by email at *R.Anne.Cann@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The EAB will advise the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems, and opportunities in an environmentally responsible manner. The EAB is interested in written and verbal comments from the public relevant to these purposes.

Proposed Agenda: At this meeting the agenda will include introduction between the new Chief of Engineers to the Board, an update from USACE on implementation of past EAB recommendations, how the host USACE district is "Living the Environmental Operating Principles"; and discussions and presentations on ongoing work plan efforts with a discussion of potential future tasks, such as aging infrastructure and aquatic ecosystem integrity, and monitoring and adaptive management.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the October 18, 2016 meeting will be available at the meeting. The final version will be provided at the meeting. All materials will be posted to the Web site after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 8:30 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Ms. Simmons, the committee DFO, or Ms. Cann, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the EAB about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Ms. Simmons, the committee DFO, or Ms. Cann, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the EAB for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the EAB until its next meeting. Please note that because the EAB operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the EAB's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–22062 Filed 9–14–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Request for Public Comment on the Draft Report Entitled Designing a Consent-Based Siting Process: Summary of Public Input

AGENCY: Fuel Cycle Technologies, Office of Nuclear Energy, Department of Energy.

ACTION: Notice of public comment period.

SUMMARY: The U.S. Department of Energy (DOE) is designing a consent-based siting process to establish an integrated waste management system to transport, store, and dispose of commercial spent nuclear fuel and high-level defense radioactive waste. In a consent-based siting approach, DOE will work with communities, tribal governments and states across the country that express interest in hosting any of the facilities identified as part of an integrated waste management system. As part of this process, the Department issued an Invitation for Public Comment in the **Federal Register** on December 23, 2015 and hosted eight public meetings across the United States in 2016 to seek input on the elements that should be considered in the development of a consent-based siting process. Information gathered via the Invitation for Public Comment and Public Meetings is summarized in the draft report "Designing a Consent-Based Siting Process: Summary of Public Input," located at *energy.gov/consentbasedsiting.* DOE will consider all comments and issue a final report in December 2016.

DATES: The 45-day public comment period begins September 15, 2016 and ends October 30, 2016. Comments must be received on or before 11:59 p.m. EDT, October 30, 2016 to be considered in the final report.

ADDRESSES: You may submit comments on the draft report by any of the following methods:

Email: Responses may be provided by email to *consentbasedsiting@hq.doe.gov.* Please submit electronic comments in Microsoft Word, or PDF file format, and avoid the use of special characters or any form of encryption.

Mail: Responses may be provided by mail to the following address: U.S. Department of Energy, Office of Nuclear Energy, Draft Consent-Based Siting Report, 1000 Independence Ave. SW., Washington, DC 20585.

Fax: Responses may be faxed to 202–586–0544. Please include "Draft Consent-based Siting Report" on the fax cover page.

Online: Responses will be accepted online at *www.regulations.gov.*

Data collected via the mechanisms listed above will not be protected from the public view in any way. Individual commentors' names and addresses (including email addresses) received as part of this Request for Public Comment are part of the public record. DOE plans to reproduce comment documents in their entirety, as appropriate, and to post all comment documents received in their entirety at *energy.gov/consentbasedsiting.* Any person wishing to have his/her address, email address, or other identifying information withheld from the public record of comment documents must state this request prominently at the beginning of any comment document, or else no redactions will be made.

FOR FURTHER INFORMATION CONTACT: Requests for further information should be sent to Mr. Andrew Griffith via *consentbasedsiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

General Information: Where can I obtain a copy of the draft report "Designing a Consent-Based Siting Process: Summary of Public Input"?

All documents in the docket are listed in the *www.regulations.gov* index. You may also download a copy of the draft report at *energy.gov/consentbasedsiting.*

Issued in Washington, DC, on September 13, 2016.

Melissa Bates,

Acting Team Leader, Nuclear Fuels Storage and Transportation Planning Project, Office of Nuclear Energy, Department of Energy.

[FR Doc. 2016–22312 Filed 9–13–16; 4:15 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–177–000.
Applicants: International Transmission Company.
Description: Application for Approval of Acquisition of Assets under FPA Section 203 of International Transmission Company.
Filed Date: 9/9/16.
Accession Number: 20160909–5101.
Comments Due: 5 p.m. ET 9/30/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–147–000.
Applicants: Grant Plains Wind, LLC.
Description: Grant Plains Wind, LLC submits Notice of Self-Certification as an Exempt Wholesale Generator.
Filed Date: 9/8/16.
Accession Number: 20160908–5295.
Comments Due: 5 p.m. ET 9/29/16.

Docket Numbers: EG16–148–000.
Applicants: Sunflower Wind Project, LLC.
Description: Notice of Self-Certification of EG of Sunflower Wind Project, LLC.
Filed Date: 9/8/16.
Accession Number: 20160908–5302.
Comments Due: 5 p.m. ET 9/29/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2501–001.
Applicants: Nicolis, LLC.
Description: Tariff Amendment: Amendment to Application for MBR to be effective 8/30/2016.
Filed Date: 9/9/16.
Accession Number: 20160909–5141.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2502–001.
Applicants: Tropico, LLC.
Description: Tariff Amendment: Amendment to Application for MBR Filing to be effective 8/30/2016.

Filed Date: 9/9/16.

Accession Number: 20160909–5138.

Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2569–000.

Applicants: The Dayton Power and Light Company.

Description: Baseline eTariff Filing: DP&L Reactive Power Tariff Filing to be effective 11/8/2016.

Filed Date: 9/9/16.

Accession Number: 20160909–5104.

Comments Due: 5 p.m. ET 9/30/16.

Docket Numbers: ER16–2570–000.

Applicants: AES Ohio Generation, LLC.

Description: § 205(d) Rate Filing: AES Ohio Generation Reactive Power Tariff Filing to be effective 11/8/2016.

Filed Date: 9/9/16.

Accession Number: 20160909–5109.

Comments Due: 5 p.m. ET 9/30/16.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM16–5–000.

Applicants: Oklahoma Municipal Power Authority.

Description: Application to Terminate Mandatory PURPA Purchase Obligation in the Southwest Power Pool of Oklahoma Municipal Power Authority.

Filed Date: 9/8/16.

Accession Number: 20160908–5297.

Comments Due: 5 p.m. ET 10/7/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22201 Filed 9–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

Tyler Bluff Wind Project, LLC	EG16–109–000
Kelly Creek Wind, LLC	EG16–110–000
Great Western Wind Energy, LLC	EG16–111–000
Salt Fork Wind, LLC	EG16–112–000
Mariah del Norte LLC	EG16–113–000
Kingman Wind Energy I, LLC	EG16–114–000
Kingman Wind Energy II, LLC	EG16–115–000
Rush Springs Wind Energy, LLC	EG16–116–000
Innovative Owner 43, LLC	EG16–117–000
Western Antelope Blue Sky Ranch B LLC	EG16–118–000
Antelope DSR 2, LLC	EG16–119–000
Western Antelope Dry Ranch LLC	EG16–120–000
North Star Solar PV LLC	EG16–121–000
Hancock Wind, LLC	EG16–122–000
Five Points Solar Park LLC	EG16–124–000
BNB Lamesa Solar LLC	EG16–125–000

Take notice that during the month of August 2016, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: September 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22203 Filed 9–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2561–000]

Sunflower Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sunflower Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22205 Filed 9–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2567–000]

Median Energy Corp.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Median Energy Corp.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22206 Filed 9–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–178–000.
Applicants: Wisconsin River Power Company, Wisconsin Public Service Corporation, Wisconsin Power and Light Company.
Description: Application of Wisconsin River Power Company, et al. for Approval of Transaction Under Section 203(a)(1) of the Federal Power Act.
Filed Date: 9/9/16.
Accession Number: 20160909–5322.
Comments Due: 5 p.m. ET 9/30/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3140–026.
Applicants: Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generation, L.P.
Description: Supplement to June 28, 2016 Triennial Market Power Analysis of Inland Empire Energy Center, LLC.
Filed Date: 9/9/16.
Accession Number: 20160909–5198.
Comments Due: 5 p.m. ET 11/8/16.

Docket Numbers: ER11–3013–006; ER10–2870–007; ER10–2865–007.
Applicants: Coolidge Power LLC, TransCanada Power Marketing Ltd, TransCanada Energy Sales Ltd.
Description: Second Amendment to June 28, 2016 Updated Market Power Analysis for the Southwest Region of the TransCanada Entities et al.
Filed Date: 9/9/16.
Accession Number: 20160909–5226.
Comments Due: 5 p.m. ET 9/30/16.

Docket Numbers: ER16–2571–000.
Applicants: New York State Electric & Gas Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: SA No. 2298 CRA between NYSEG and Penelec to be effective 8/19/2016.
Filed Date: 9/9/16.
Accession Number: 20160909–5199.
Comments Due: 5 p.m. ET 9/30/16.

Docket Numbers: ER16–2572–000.
Applicants: American Transmission Systems, Incorporated, Metropolitan Edison Company, Pennsylvania Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement Nos. 4480, 4481, 4482, 4483, 4484, 4532, and 4533 to be effective 10/1/2016.
Filed Date: 9/9/16.
Accession Number: 20160909–5235.
Comments Due: 5 p.m. ET 9/30/16.

Docket Numbers: ER16–2573–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Service Agreement No. 4527 and Notice of Cancellation to be effective 8/10/2016.
Filed Date: 9/9/16.
Accession Number: 20160909–5242.
Comments Due: 5 p.m. ET 9/30/16.

Docket Numbers: ER16–2574–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Notice of Cancellation of Service Agreement No. 3780, Queue No. W4–045 to be effective 7/26/2016.
Filed Date: 9/9/16.
Accession Number: 20160909–5250.
Comments Due: 5 p.m. ET 9/30/16.

Docket Numbers: ER16–2575–000.
Applicants: New England Power Company.
Description: Tariff Cancellation: Notice of Cancellation of Superseded Agreements with Wheelabrator Saugus Inc. to be effective 11/9/2016.
Filed Date: 9/9/16.
Accession Number: 20160909–5270.
Comments Due: 5 p.m. ET 9/30/16.

Docket Numbers: ER16–2576–000.
Applicants: UGI Energy Services, Inc.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 10/1/2013.
Filed Date: 9/9/16.
Accession Number: 20160909–5295.
Comments Due: 5 p.m. ET 9/30/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22202 Filed 9–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM16–17–000]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes; Notice of Posting of Staff's Technical Workshop Notes

On August 11, 2016, Commission staff held a technical workshop to review the draft data dictionary attached to the Notice of Proposed Rulemaking in this docket (RM16–17).[1] The workshop provided a forum for interactive, detailed discussion of the elements contained in the draft data dictionary.

This notice announces that Staff's notes on the technical workshop have been posted to the Commission's Web site. These notes are an informal summary of the key points from the workshop and are not intended to be an official transcript of the proceedings. The notes can be found on the event page for the workshop under the 'Related Files' heading. A link to the event page is provided below: *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=8416&CalType=%20&CalendarID=116&Date=08/11/2016&View=Listview.*

For additional information, please contact David Pierce of FERC's Office of Enforcement at (202) 502–6454 or send an email to *RM16-17.NOPR@ferc.gov.*

Dated: September 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22207 Filed 9–14–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes,* FERC Stats. & Regs. ¶ 32,717 (2016).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–111–000; QF15–792–001]

SunE M5B Holdings, LLC; SunE M5B Holdings, LLC; Notice of Petiton for Declaratory Order

Take notice that on September 7, 2016, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[1] SunE M5B Holdings, LLC filed a petition for declaratory order providing limited waiver of the filing requirements applicable to small power production facilities set forth in Section 292.203(a)(3) of the Commission's regulations,[2] all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on September 28, 2016.

Dated: September 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22204 Filed 9–14–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] 18 CFR 385.207 (2016).

[2] 18 CFR 292.203(a)(3).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–46–OECA]

National Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, the National Environmental Justice Advisory Council (NEJAC) is a necessary committee which is in the public interest. Accordingly, NEJAC will be renewed for an additional two-year period. The purpose of the NEJAC is to provide advice and recommendations to the Administrator about issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

Inquiries may be directed to Matthew Tejada, NEJAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue NW., (Mail Code 2201A), Washington, DC 20460.

Dated: August 4, 2016.

Larry Starfield,

Principal Deputy Assistants Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 2016–22220 Filed 9–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–14–OA]

Children's Health Protection Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations to the Children's Health Protection Advisory Committee.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a range of qualified candidates for consideration for appointment to its Children's Health Protection Advisory Committee (CHPAC). The EPA anticipates filling vacancies by March 1, 2017. The EPA may also use sources in addition to this **Federal Register** Notice to solicit nominees.

Background: The Children's Health Protection Advisory Committee is chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established this Committee in 1997 to provide independent advice to the EPA Administrator on a broad range of environmental issues affecting children's health.

The EPA Administrator appoints members for three-year terms with a cap on service at six years. The Committee meets 2–3 times annually and the average workload is approximately 10 to 15 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business, but members must be able to cover expenses prior to reimbursement.

The CHPAC is looking for representatives from the private sector, academia non-governmental organizations, public-health practitioners, pediatricians, obstetric professionals, occupational medicine practitioners and community nurses. We are also seeking representatives from environmental groups, health groups, health research, the fields of epidemiology and toxicology, and tribal, state, county and local government.

We are looking for experience in children's environmental health policy, research, and in specific issues such as lead poisoning and asthma, prenatal environmental exposures, chemical exposures, public health information tracking, knowledge of EPA regulation development, risk assessment, exposure assessment, tribal children's environmental health and children's environmental health disparities. The EPA encourages nominations from all racial and ethnic groups.

The EPA will use the following criteria to evaluate nominees:

—The ability of candidate to effectively contribute to discussions and provide useful recommendations on the following issues:
  Risk assessment, exposure assessment and children's health; Air quality, both indoor and outdoor, regulations, policies, outreach and communication;
  Water quality, regulations, policies, outreach and communication;
  Prenatal exposures and health outcomes;
  Chemical exposures, pesticide exposures, health outcomes, policy and regulation;
  Asthma disparities and other environmental health disparities;
  Data and information collection issues;
  Lead, mercury and other heavy metal concerns for children's health;
  Exposures that affect children's health in homes, schools, and child care centers;
  Building capacity among health providers to prevent, diagnose and treat environmental health conditions in children.
—The background and experience that would contribute to the diversity of perspectives on the committee (*e.g.,* geographic, economic, social, cultural, educational, and other considerations).
—Ability to volunteer time to attend meetings 2–3 times a year in Washington DC, participate in teleconference meetings, develop recommendations to the Administrator, and prepare reports and advice letters.

Nominations must include:

- Brief statement describing the nominee's interest in serving on the CHPAC.
- Short biography (no more than one page) describing the professional and educational qualifications, including a list of relevant activities, and any current or previous service on federal advisory committees.
- Attestation that nominee is not a lobbyist.
- Statement about the perspective and diversity the nominee brings to the committee.
- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address, and daytime telephone number.
- Candidates may self-nominate; one letter of support is welcome.

Submit nominations by September 27, 2016 by email to *EPA_CHPAC@icfi.com* or mail to Martha Berger, Designated Federal Officer, Office of Children's Health Protection, U.S. Environmental Protection Agency, Mail Code 1107T, 1301 Constitution Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Martha Berger, Designated Federal Officer, U.S. EPA; telephone (202) 564–2191 or *berger.martha@epa.gov.*

Dated: September 6, 2016.

Martha Berger,

Designated Federal Officer.

[FR Doc. 2016–22124 Filed 9–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–40–OA]

Notification of a Closed Teleconference of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office is announcing a teleconference of the Chartered SAB to conduct a review of a draft report of recommendations regarding the agency's 2016 Scientific and Technological Achievement Awards (STAA). The Chartered SAB teleconference will be closed to the public.

DATES: The Chartered SAB teleconference date is Thursday, October 11, 2016, from 1:00 p.m. to 2:30 p.m. (Eastern Time).

ADDRESSES: The Chartered SAB closed teleconference will take place via telephone only. General information about the SAB may be found on the SAB Web site at *http://www.epa.gov/sab.*

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Mr. Thomas Carpenter, Designated Federal Officer, by telephone: (202) 564–4885 or email at *carpenter.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), the EPA has determined that the chartered SAB quality review teleconference will be closed to the public. The purpose of the teleconference is for the chartered SAB to conduct a review of a draft SAB advisory report of recommendations regarding the agency's 2016 STAA. The Chartered SAB teleconference will be closed to the public.

Quality review is a key function of the chartered SAB. Draft reports prepared by SAB committees, panels, or work groups must be reviewed and approved by the chartered SAB before transmittal to the EPA Administrator. The chartered SAB makes a determination in a meeting consistent with FACA about all draft reports and determines whether the report is ready to be transmitted to the EPA Administrator.

At the teleconference, the chartered SAB will conduct a review of draft report developed by an SAB committee charged with developing recommendations regarding the agency's 2016 STAA. (for more information, see *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/STAA-2016-2018?OpenDocument.*

The STAA awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. I have determined that the Chartered SAB quality review teleconference will be closed to the public because it is concerned with recommending employees deserving of awards. In making these draft recommendations, the EPA requires full and frank advice from the SAB. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature, the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, is protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). Minutes of the Chartered SAB teleconference will be certified by the chair and retained in the public record.

Dated: September 7, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–22231 Filed 9–14–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–51–Region 6]

Public Water System Supervision Program Revision for the State of New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of New Mexico is revising its approved Public Water System Supervision (PWSS) program. New Mexico has adopted the Revised Total Coliform Rule (RTCR) by reference under 20.7.10.100 of the *New Mexico Administrative Code and Regulations Pertaining to Public Water Systems.* EPA has determined that the RTCR primacy application submitted by New Mexico is no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve this PWSS program revision package.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by October 17, 2016 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by October 17, 2016, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on October 17, 2016. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: New Mexico Environment Department, Drinking Water Bureau, Harold Runnels Building, 190 St. Francis Dr., Suite S2120, Santa Fe, New Mexico 87505; and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of the documents which explain the rule can also be obtained at EPA's Web site at *https://www.federalregister.gov/articles/2013/02/13/2012-31205/national-primary-drinking-water-regulations-revisions-to-the-total-coliform-rule* and *https://www.federalregister.gov/articles/2014/02/26/2014-04173/national-primary-drinking-water-regulations-minor-corrections-to-the-revisions-to-the-total-coliform,* or by writing or calling Ms. Evelyn Rosborough at the address below.

FOR FURTHER INFORMATION CONTACT: For further information contact Evelyn Rosborough, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–7515, facsimile (214) 665–6490, or email: *rosborough.evelyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: September 2, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–22237 Filed 9–14–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0779]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 14, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0779.

Title: Sections 90.20(a)(1)(iii), 90.769, 90.767, 90.763(b)(l)(i)(a), 90.763(b)(l)(i)(B), 90.771(b) and 90.743, Rules for Use of the 220 MHz Band by the Private Land Mobile Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 140 respondents; 670 responses.

Estimated Time per Response: 2 hours to 20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i), 303(g), 303(r) and 332(a).

Total Annual Burden: 5,886 hours.

Total Annual Cost: $135,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is a need for confidentiality with this collection of information.

Needs and Uses: The Commission will submit this expiring collection to the Office of Management and Budget (OMB) for approval. The Commission is requesting approval for an extension of information collection 3060–0779.

The collection includes rules to govern the future operation and licensing of the 220–222 MHz and (220 MHz service). In establishing this licensing plan, FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminates unnecessary regulatory burdens, and enhances the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for a radio service, a certain number of regulatory and information burdens are necessary to verify licensee compliance with FCC rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of Secretary.

[FR Doc. 2016–22195 Filed 9–14–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0473, 3060–0423 and 3060–0626]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 14, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0473.

Title: Section 74.1251, Technical and Equipment Modifications.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 100 respondents; 300 responses.

Estimated Time per Response: 0.25 hour.

Frequency of Response: Recordkeeping requirement; One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contain in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 75 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 74.1251(b)(1) states that formal application on FCC Form 349 is required of all permittees and licensees for any of the following changes: Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been certificated by the FCC for use by FM translator or FM booster stations, or any change which could result in the electrical characteristics or performance of the station. Upon the installation or modification of the transmitting equipment for which prior FCC authority is not required under the provisions of this paragraph, the licensee shall place in the station records a certification that the new installation complies in all respects with the technical requirements of this part and the terms of the station authorization.

47 CFR 74.1251(c) requires FM translator licensee to notify the FCC, in writing, of changes in the primary FM station being retransmitted.

OMB Control Number: 3060–0423.

Title: Section 73.3588, Dismissal of Petitions to Deny or Withdrawal of Informal Objections.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 20 minutes.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 17 hours.

Total Annual Cost: $63,750.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 73.3588 states whenever a petition to deny or an informal objection has been filed against any applications for renewal, new construction permits, modifications, and transfers/assignments, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal. This request must include the following documents: (1) A copy of any written agreement related to the dismissal or withdrawal, (2) an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, (3) an itemization of the expenses for which it is seeking reimbursement, and (4) the terms of any oral agreements related to the dismissal or withdrawal of the petitions to deny. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The affidavit must also include the terms of any oral agreements relating to the dismissal or withdrawal of the petition to deny.

OMB Control No.: 3060–0626.

Title: Section 90.483, Permissible Methods and Requirements of Interconnecting Private and Public Systems of Communications.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business of other for-profit entities.

Number of Respondents and Responses: 100 respondents; 100 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Total Annual Burden: 100 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection.

Needs and Uses: When a frequency is shared by more than one system, automatic monitoring equipment must be installed at the base station to prevent activation of the transmitter when signals of co-channel stations are present and activation would interfere with communications in progress. Licensees may operate without the monitoring equipment if they have obtained the consent of all co-channel licensees located within a 120 kilometer (75 mile) radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. This information is necessary to ensure that licensees comply with the Commission's technical and operational rules, and to prevent activation of the transmitter when signals of co-channel stations are present and could possibly interfere with communications in process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of Secretary.

[FR Doc. 2016–22194 Filed 9–14–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: September 20, 2016; 10:00 a.m.

PLACE: 800 N. Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: The first portion of the meeting will be held in Open Session; the second in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Briefing by Commissioner Maffei on U.S./Japan Bilateral Discussions
2. Staff Briefing on Foreign-based NVOCC Registration Renewal Process (Form FMC–65)

Closed Session

1. Staff Briefing on Hanjin Shipping Bankruptcy and Shipping Disruptions
2. Staff Briefing on the Maersk/MSC Vessel Sharing Agreement, FMC Agreement No. 012293

CONTACT PERSON FOR MORE INFORMATION: Rachel E. Dickon, Assistant Secretary, (202) 523–5725.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–22299 Filed 9–13–16; 4:15 pm]

BILLING CODE 6730–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2016–0090, Docket Number NIOSH 288–A]

A Performance Test Protocol for Closed System Transfer Devices Used During Pharmacy Compounding and Administration of Hazardous Drugs

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting and request for public comment on a draft testing protocol.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces a public meeting concerning a universal closed system drug-transfer device (CSTD) testing protocol entitled, *A Performance Test Protocol for Closed System Transfer Devices Used During Pharmacy Compounding and Administration of Hazardous Drugs, http://www.cdc.gov/niosh/topics/hazdrug/default.html/.*

This is an opportunity for public comment on the protocol, the proposed list of surrogates, and to respond to NIOSH questions regarding the protocol.

To view the protocol and related materials, visit *www.regulations.gov* and enter CDC–2016–0090 in the search field and click "Search."

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I. Background
II. Protocol
III. Public Meeting

DATES: The public meeting will be held on November 7, 2016, 9:00 a.m.–3:00 p.m. Eastern Time, or until after the last public commenter has spoken, whichever occurs first. Electronic or written comments must be received by December 7, 2016.

ADDRESSES: The public meeting will be held at the Alice Hamilton Laboratories, Conference Room C, 5555 Ridge Avenue, Cincinnati, OH 45213. Virtual attendance using LiveMeeting and audio conference will be available.

You may submit written comments, identified by CDC–2016–0090 and Docket Number NIOSH 288–A, by either of the following two methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: All information received in response to this notice must include the agency name and docket number [CDC–2016–0090; NIOSH 288–A]. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. All information received in response to this notice will also be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 155, Cincinnati, OH 45226–1998.

FOR FURTHER INFORMATION CONTACT: Deborah V. Hirst, NIOSH, Division of Applied Research and Technology, Alice Hamilton Laboratories, 1090 Tusculum Ave., MS R–5, Cincinnati, OH 45226. (513) 841–4141 (not a toll free number) or email *DHirst@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: Closed system drug-transfer devices (CSTDs) are generally available in two design types: (1) One that uses a physical barrier to block the unintended release of drug into the surrounding environment or the intake of environmental contaminants into the sterile drug pathway and (2) one that uses air cleaning or filtration technologies to prevent the unintended release of drug into the surrounding environment or the intake of environmental contaminants into the sterile drug pathway. On September 8, 2015, NIOSH released the draft test protocol, *A Vapor Containment Performance Protocol for Closed System Transfer Devices Used During Pharmacy Compounding and Administration of Hazardous Drugs,* for public review. The draft protocol was developed by NIOSH to evaluate how containment effective the physical barrier-type CSTDs were as an indicator of how protective they would be at preventing hazardous drug escape from the closed system. After significant public comment and several inquiries, on January 19, 2016, NIOSH published a Request for Information for the development of a test protocol to evaluate the performance of CSTDs that adopt air-cleaning or filtration technologies. Since the **Federal Register** docket for both the draft protocol and the request for information closed on March 8, 2016, NIOSH has done the following:

a. Generated a list of surrogates to test both types of CSTDs.

b. Met individually with CSTD manufacturers who requested informal meetings to discuss the current draft protocol and/or items NIOSH should consider in developing a new performance test protocol for air-cleaning CSTDs. This was in answer to NIOSH's Request for Information question #12, Are you interested in being a collaborative partner with NIOSH on the development of an air cleaning or filtration technologies CSTD test protocol?

c. Drafted a new universal performance test protocol applicable to both barrier and air-cleaning types of CSTDs.

II. Protocol: The proposed protocol will apply to both barrier and air-cleaning types of CSTDs, NIOSH will host a public meeting to give an update of new protocol developments. The update will include discussions covering proposed drug surrogates, benefits, and challenges with developing a new universal test protocol, and to allow the public to comment. Special emphasis will be placed upon the following:

- *Proposed surrogates:* Surrogates were identified based on vapor pressure and water solubility. Drug surrogates were chosen with vapor pressures up to 100 times that of the most volatile drug vapor pressure known to exist on the NIOSH hazardous drug list. The increased surrogate vapor pressure should offer a safety factor to the test protocol.

○ Is the 100 times the vapor pressure safety factor adequate?

○ Should other chemical properties besides vapor pressure and water solubility be considered?

○ Are there other surrogates NIOSH should consider for testing the performance of CSTDs?

○ Will any of the NIOSH's list of proposed surrogates cause damage to the CSTD plastic and/or parts (*i.e.,* needles, septum, etc.)?

○ Are there other aspects specific to air cleaning technologies that are not being challenged with the proposed surrogate testing protocol?

○ Are there other aspects specific to the barrier CSTD technologies that are not being adequately challenged with the proposed surrogate testing protocol?

- *Sampling Strategy:* The new draft protocol relies upon analytical chemistry analysis of at least two simultaneously-collected sorbent tube air samples to detect drug surrogate escape from the CSTD.

○ Should less or more sampling tubes be used inside the environmental test chamber?

○ How should the sampling tubes be positioned inside the environmental test chamber?

○ Since contaminant levels will no longer be immediately known, background concentrations will not be realized until after test completion and sample analysis. What metrics should be applied to the background concentrations and how should they impact the reported concentrations observed during conduct of the protocol tasks?

- *Design of environmental test chamber:* NIOSH proposes to keep the same environmental test chamber as that proposed for the original vapor containment test protocol, however airflow through the chamber will cease during the actual test procedures and air sampling.

○ Should NIOSH keep the current design of the environmental test chamber?

- If not, what other designs should be considered and what validation requirements should be placed upon them?

○ Sampling for escaped surrogate will be performed by a sampling pump and air sampling tubes.

- Are there concerns that the sample pump discharge air plus task-associated hand movements will be insufficient to provide adequate air mixing?
- *Compounding and Administration tasks:*

○ NIOSH has updated Task 1 and Task 2 in Appendix A of the performance test protocol to incorporate the adoption of CSTD manufacturers' Instructions for Use (IFU).

- Should other manipulations be added or deleted from the current tasks listed in order to comply with a manufacturer's IFU?

○ For purposes of challenging a CSTD's containment performance, should the number of repetitions for each CSTD:Task pairing be less than or greater than 4?

- What special considerations has NIOSH not considered in developing the new draft performance test protocol?

III. Public Meeting: NIOSH will hold a public meeting to discuss a universal closed system drug-transfer device (CSTD) testing (draft) protocol entitled, *A Performance Test Protocol for Closed System Transfer Devices Used During Pharmacy Compounding and Administration of Hazardous Drugs.* The meeting will allow commenters the opportunity to address the new draft protocol, the proposed list of hazardous drug test surrogates, and to discuss NIOSH questions regarding the new protocol.

The meeting is open to the public, limited only by the capacity (80 attendees) of the conference room. Confirm your attendance to this meeting by sending an email to *DHirst@cdc.gov* by October 21, 2016. An email confirming registration will be sent from NIOSH and will include details needed to participate.

Registration is required for both in-person and LiveMeeting participation. An email confirming registration will be sent from NIOSH for both in-person participation and audio conferencing participation.

Details required to participate via the audio conferencing will be provided by NIOSH in a separate email. This option will be available to participants on a first come, first served basis and is limited to the first 100 participants.

Non-U.S. Citizens: Because of CDC Security Regulations, any non-U.S. citizen wishing to attend this meeting in-person must provide the following information to Deborah V. Hirst. Requests may be submitted by facsimile (513) 841–4506, or emailed to *DHirst@cdc.gov,* no later than September 28, 2016. The information required includes:

Name:
Gender:
Date of Birth:
Place of Birth (city, province, state, country):
Citizenship:
Passport Number:
Date of Passport Issue:
Date of Passport Expiration:
Type of Visa:
U.S. Naturalization Number (if a naturalized citizen):
U.S. Naturalization Date (if a naturalized citizen):
Visitor's Organization:
Organization Address:
Organization Telephone Number:
Visitor's Position/Title within the Organization:

This information will be transmitted to the CDC Security Office for approval. Visitors will be notified as soon as approval has been obtained. If access approval is not granted to a non-U.S. Citizen, the individual may participate by LiveMeeting and audio conference.

Requests to provide oral comments at the public meeting should be submitted by telephone (513) 841–4141, facsimile (513) 841–4506, or emailed to *DHirst@cdc.gov* with "Request to Speak" in the subject line. Requests can also be mailed to Deborah V. Hirst, 1090 Tusculum Ave., MS R–5, Cincinnati, OH 45226. All requests to speak should contain the name, address, telephone number, and relevant business affiliations of the speaker, and the approximate time requested for oral comments. Requests must be received by October 21, 2016.

Oral comments from each speaker will be limited to 10 minutes. After reviewing the requests to make oral comments, NIOSH will notify the speaker when his/her oral comments are scheduled. If a participant is not in attendance when he/she is scheduled to speak, the remaining participants will be heard in order. After the last scheduled speaker is heard, participants who missed their assigned times may be allowed to speak, limited by time available.

Attendees who wish to speak but did not submit a request for the opportunity to make oral comments may be given this opportunity after the scheduled speakers are heard, at the discretion of the presiding officer and limited by time available.

Oral comments will be transcribed and included in the docket.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2016–22132 Filed 9–14–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Supplement to National Technical Resource Center for the Newborn Hearing Screening and Intervention Program at the Utah State University

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of Supplement to National Technical Resource Center for the Newborn Hearing Screening and Intervention Program at the Utah State University—Grant Number U52MC04391.

SUMMARY: HRSA announces the award of a supplement in the amount of $300,000 for the National Technical Resource Center (NTRC) for the Newborn Hearing Screening and Intervention program cooperative agreement. Funding in future years is contingent upon satisfactory performance of the recipient, need, and availability of funds.

The purpose of the NTRC is to address new research, approaches, and practice advances in the fields of family engagement, early language acquisition, and early literacy. The supplement will fund Utah State University, the cooperative agreement recipient, during the budget periods of the supplement 4/1/2016–3/31/2020, to respond to changes in research, policy, technology, and practice in the newborn hearing screening field in the areas of family engagement, early language acquisition, and early literacy. Funding in FY 2017, FY 2018, and FY 2019, is contingent upon appropriations, satisfactory performance of the recipient, need, and availability of funds.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Utah State University.

Amount of Non-Competitive Awards: $300,000.

Period of Supplemental Funding: 4/1/2016–3/31/2020.

CFDA Number: 93.251.

Authority: Public Health Service Act, § 399M, as added by § 702 of the Children's Health Act of 2000 (Pub. L. 106–310) and amended by § 2 of the Early Hearing Detection and Intervention Act of 2010 (Pub. L. 111–337) (42 U.S.C. 280g–1)

JUSTIFICATION: In 2015, following an objective review of its applications, HRSA awarded the NTRC for the Newborn Hearing Screening and Intervention program cooperative agreement to Utah State University, a state institution of higher education.

Authorized by the Public Health Service Act, § 399M, as added by the Children's Health Act of 2000, § 702 (Pub. L. 106–310) and further amended by § 2 of the Early Hearing Detection and Intervention Act of 2010 (Pub. L. 111–337) (42 U.S.C. 280g–1), the purpose of the Universal Newborn Hearing Screening (UNHS) program is to utilize specifically targeted and measurable interventions to increase the number of infants who are followed up for rescreening, referral, and intervention after not passing a physiologic newborn screening examination prior to discharge from the newborn nursery.

As stated in the funding opportunity announcement (FOA) HRSA 15–085, the focus of the NTRC is to provide to state Early Hearing Detection and Intervention (EHDI) programs training and technical assistance for planning, policy development, implementing innovations, and quality improvement methodology to reduce their loss to follow-up rate/loss to documentation, *i.e.* the number of infants who do not receive timely and appropriate screening follow-up and coordinated interventions.

Since the publication of the FOA on September 9, 2014, many changes in research, policy, technology, and practice have occurred in the newborn hearing screening field in the areas of family engagement, early language acquisition, and early literacy. The NTRC cooperative agreement must address these changes to provide appropriate training and technical assistance. The Maternal and Child Health Bureau (MCHB) proposes to supplement the recipient in FY 2016 and 2017 to address new research, approaches, and practice advances in the field of family engagement. MCHB proposes to supplement the recipient in FY 2018 and 2019 to address the latest research findings and advances related to early language acquisition and early literacy. Funding in FY 2017, FY 2018, and FY 2019 is contingent upon appropriations, satisfactory performance of the recipient, need, and availability of funds.

According to the National Institute for Children's Health Quality, families have a unique perspective on how the system currently affects them personally and can provide invaluable viewpoints on the steps that can be implemented to improve the system. Since the system exists to meet the needs of the deaf or hard of hearing infants and children, it is critical that their parents and families' viewpoints are acknowledged and leveraged. MCHB recommends greater representation of individuals who are deaf or hard of hearing throughout the NTRC as well as providing opportunities for families of deaf or hard of hearing children to become leaders within the EHDI system.

To address these deficiencies, Utah State University submitted a prior approval request for funds to improve its family engagement. The NTRC will take a streamlined and targeted approach toward engaging families and family based organizations in its work. Though not introducing new services or activities, the NTRC will use the supplemental funds to refine its current services and activities to:

1. Increase and refocus the family advisory committee to be more reflective of families who have a deaf or hard of hearing child;
2. Target the NTRC's scholarship program toward greater family engagement and leadership development;
3. Enhance family engagement in EHDI quality improvement activities; and
4. Increase the NTRC's financial and programmatic support for the work by Hands & Voices to strengthen family engagement in EHDI programs.

This will be the second supplement for this cooperative agreement.

FOR FURTHER INFORMATION CONTACT: Sadie Silcott, MBA, MPH, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18W57, Rockville, Maryland 20857; Phone: (301) 443–0133; Email: *ssilcott@hrsa.gov.*

Dated: September 2, 2016.

James Macrae,

Acting Administrator.

[FR Doc. 2016–21711 Filed 9–14–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Service Administration, HHS.

ACTION: Notice of Meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting is scheduled for Advisory Commission on Childhood Vaccines (ACCV). This meeting will be open to the public. Information about the ACCV and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html.*

DATES: The meeting will be held on September 20, 2016, at 10:00 a.m. EDT.

ADDRESSES: This meeting will be held via Adobe Connect Webinar and teleconference. The address for the meeting is 5600 Fishers Lane, Rockville, MD 20857, Conference Room 09N17. The public can join the meeting by:

1. (Audio Portion) Calling the conference phone number 800–799–3561 and providing the following information:

Leader Name: Dr. Narayan Nair
Password: 8164763

2. (Visual Portion) Connecting to the ACCV Adobe Connect Pro Meeting using the following URL: *https://hrsa.connectsolutions.com/accv/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL:*https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.*

FOR FURTHER INFORMATION CONTACT: Anyone requesting information regarding the ACCV should contact Annie Herzog, Program Analyst, Division of Injury Compensation Programs (DICP), Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Annie Herzog, Program Analyst, DICP, Health Resources and Services Administration, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (2) call (301) 443–6593; or (3) send an email to *aherzog@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The ACCV was established by section 2119 of the Public Health Service Act (the Act) (42 U.S.C. 300aa–19), as enacted by Public Law (Pub. L.) 99–660, and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

The activities of the ACCV also include: Recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 of the Act regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying federal, state, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b) of the Act; advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; consulting on the development or revision of Vaccine Information Statements; and recommending to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the VICP.

During the September 20 meeting, the agenda items will include, but are not limited to, updates from the Division of Injury Compensation Programs (DICP), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Members of the public will have the opportunity to provide comments. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to make oral comments or provide written comments to the ACCV should be sent to Annie Herzog using the address or phone number above by September 18, 2016. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Annie Herzog, using the address and phone number by September 16.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–22193 Filed 9–14–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Opportunity for Public Comment on the Office of Dietary Supplements Draft 2016–2021 Strategic Plan

SUMMARY: The Office of Dietary Supplements (ODS) at the National Institutes of Health (NIH) has initiated a strategic planning process that will culminate in the ODS Strategic Plan for 2016–2021. To assist with this process, the ODS requests input from research communities—academic, government, and industry—and from other interested parties. The overall purpose of the strategic planning effort is to identify both new opportunities and emerging needs for incorporation in the programmatic efforts of the Office. A draft is available on the ODS Web site at *ods.od.nih.gov/StrategicPlan.*

DATES: In order to ensure full consideration, all responses must be submitted by 11:59 p.m., September 30, 2016.

ADDRESSES: Interested individuals and organizations should submit their responses to *ODSplan@od.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Anne L. Thurn, Ph.D., Office of Dietary Supplements, National Institutes of Health, 6100 Executive Boulevard, Room 3B01, Bethesda, MD 20892–7517, Phone: 301–435–2920, Fax: 301–480–1845, Email: *ODSplan@od.nih.gov.*

SUPPLEMENTARY INFORMATION: ODS has drafted its next Strategic Plan and desires public comment on the progress of its programs and on future needs and opportunities for program activities. The draft plan and related information are available on the ODS Web site at *ods.od.nih.gov/StrategicPlan.*

Guidance is being requested from all interested parties on these important issues:

- Are the current strategic goals adequate?
- Is ODS meeting its stakeholders' needs?
- In the future, should some of ODS's current programs or activities be given higher (or lower) priority?
- How can ODS more effectively provide useful information to the ODS user community, including consumers, investigators, practitioners, industry, media, policy makers, government, and other interested parties?

Dated: September 9, 2016.

Lawrence Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–22233 Filed 9–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Pilot Effectiveness Studies and Services Research Grants.

Date: October 7, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Research Education Programs (R25).

Date: October 13, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 9, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22165 Filed 9–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–326: Science Track Award for Research.

Date: October 4, 2016.

Time: 2:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Neuroscience and Ophthalmic Imaging Technologies Study Section.

Date: October 12–13, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel Fisherman's Wharf, 2620 Jones Street, San Francisco, CA 94133

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214 MSC 7814, Bethesda, MD 20892–7814, 301–435–1787, *borzanj@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: C–L Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Kidney Molecular Biology and Genitourinary Organ Development.

Date: October 13, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza: Washington Natl Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Ganesan Ramesh, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 2182, MSC 7818, Bethesda, MD 20892, *ganesan.ramesh@nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Intercellular Interactions Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, 301–755–4335, *greg.shelness@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Gabriel B. Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Disparities and Equity Promotion Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Alexey Belkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, Bethesda, MD 20817, 301–435–1786, *alexey.belkin@nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: October 13–14, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Chicago-Magnificent Mile, 300 E. Ohio, Chicago, IL 60611.

Contact Person: Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–137: Bioengineering Research.

Date: October 13, 2016.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel Fisherman's Wharf, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: October 14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Fouad A. El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Enabling Imaging Technologies.

Date: October 14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 9, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22163 Filed 9–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Health Implementation Initiatives for Low-Income Countries.

Date: October 7, 2016.

Time: 10:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 9, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22164 Filed 9–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

CARA Act's Required Training of Nurse Practitioners and Physician Assistants

AGENCY: Substance Abuse and Mental Health Services Administration, United States Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) announces that it will hold a public meeting on October 1, 2016, to discuss the training requirements for nurse practitioners (NPs) and physician assistants (PAs) that have been stipulated in the Comprehensive Addiction and Recovery Act (CARA). The session will be held in Newark, NJ.

DATES: The meeting will be held on October 1, 2016, from 9:00 to 11:00 a.m.

ADDRESSES:

In Person: The meeting will be held at the Newark Liberty International Airport Marriott, 1 Hotel Rd. Newark, NJ 07114.

By Phone: Phone Number: 888–942–9687; Passcode: 5093420.

By Internet: URL: https://www.mymeetings.com/emeet/rsvp/index.jsp?customHeader=mymeetings&Conference_ID=1063134&passcode=5093420; Conference number: 1063134; Passcode: 5093420.

SAMHSA will post additional logistical information on how to participate in person, by phone, or on the web at: *http://caralisteningsession.eventbrite.com* in advance of the listening session.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the meeting, please contact: Dr. Mitra Ahadpour, Director, Division of Pharmacological Therapies, Center for Substance Abuse Treatment, SAMHSA, (240) 276–2134 or *mitra.ahadpour@samhsa.hhs.gov.*

Background

On July 22, 2016 CARA was signed into law by President Obama. The new law authorizes prescribing privileges of covered medications in office-based settings by NPs and PAs for five years (until October 1, 2021). At this meeting, SAMHSA will be seeking input on how to best implement the requirements that all NPs and PAs must have twenty-four hours of training before obtaining a waiver to prescribe covered medications. The meeting will include the organizations listed in statute and is also open to the public. Specifically, SAMHSA is seeking input on existing training programs that may meet the statutory requirements for training and within the twenty-four hours of training, the number of hours that NPs and PAs would have to complete on each topic listed in the CARA Act.

The agenda will include:

—Welcome and introductions

—Review of CARA Training Requirements

—Discussion about Training Requirements

Summer King,
Statistician.
[FR Doc. 2016–22130 Filed 9–14–16; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0142]

Towing Safety Advisory Committee; October 2016 Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Towing Safety Advisory Committee will meet in Washington, DC, to review and discuss recommendations from its Subcommittees and to receive briefs listed in the agenda under **SUPPLEMENTARY INFORMATION**. All meetings will be open to the public.

DATES: The Subcommittees will meet on Wednesday, October 26, 2016, from 8 a.m. to 5:30 p.m. The full Towing Safety Advisory Committee will meet on Thursday, October 27, 2016, from 8 a.m. to 5:30 p.m. These meetings may close early if the Subcommittees or Committee have completed its business.

ADDRESSES: All meetings will be held at the Department of Transportation Headquarters Media Center, 1200 New Jersey Avenue SE., Washington, DC 20593. The telephone number for the Department of Transportation Headquarters Media Center is 502–992–5326.

For additional information on the location or to request reasonable accommodations for the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

Instructions: To facilitate public participation, written comments on the issues in the "Agenda" section below must be submitted no later than October 17, 2016, if you want committee members to review your comment prior to the meeting. You must include "Department of Homeland Security" and the docket number [USCG–2016–0142] in your submission. Written comments may also be submitted using Federal eRulemaking Portal: *http://www.regulations.gov.* If you encounter technical difficulties, contact Mr. William J. Abernathy. Comments received will be posted without alteration at *http://www.regulations.gov* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005 issue of the **Federal Register** (70 FR 15086).

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* and use "USCG–2016–0142" in the "Search" box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Commandant (CG–OES–2), ATTN: Mr. William J. Abernathy, Towing Safety Advisory Committee Alternate Designated Federal Officer, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1363, fax 202–372–8387, or email at *William.J.Abernathy@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the Federal Advisory Committee Act, (Title 5, U.S.C. Appendix). This committee is established in accordance with, and operates under the provisions of, the *Federal Advisory Committee Act.* As stated in 33 U.S.C. 1231a, the Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

Further information about the Towing Safety Advisory Committee is available here: *http://www.facadatabase.gov.* Click on the search tab and type "Towing Safety" into the search form. Then select "Towing Safety Advisory Committee" from the list. A copy of each draft report and presentation as well as the meeting agenda will be available at: *http://homeport.uscg.mil/tsac.*

Agenda of Meetings

On October 26 and 27, 2016, the Towing Safety Advisory Committee and its subcommittees will meet to review, discuss, deliberate, and formulate recommendations, as appropriate, on the following:

(1) Current Subcommittees and Tasks
  a. Subchapter M Implementation(Task 16–01)
  b. Inland Firefighting (Task 16–02)
  c. Articulated Tug and Barge (Task 15–02)
  d. Electronic Charting Systems (Task 15–03)
(2) Proposed New Subcommittee and Task
  (a) Unmanned Liquefied Natural Gas Tank Barges (Task 16–03)

On October 27, 2016, at 8:30 a.m. the Committee will hear remarks from Captain Verne Gifford, U.S. Coast Guard, Director of Inspections and Compliance, and Mr. Paul Jaenichen, Administrator, Maritime Administration, U.S. Department of Transportation.

The Committee will also have a question and answer session concerning the Coast Guard's Mariner Credentialing Program and a discussion on the creation of a consolidated Coast Guard Headquarters Office of Merchant Mariner Credentialing.

Public comments or questions will be taken throughout the meeting as the committee discusses the issues prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: August 30, 2016.

J.G. Lantz,
Director of Commercial Regulations and Standards.
[FR Doc. 2016–22131 Filed 9–14–16; 8:45 am]
BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0886]

Notice of Public Listening Session: Heavy Fuel Oil in the Arctic

AGENCY: Coast Guard, DHS.

ACTION: Notice of public listening session.

SUMMARY: The United States Coast Guard will conduct a public listening session in Washington, DC, on the topic of heavy fuel oil use by ships in the Arctic. The purpose of this public listening session is for the Coast Guard to gather information on issues relating to the use of heavy fuel oil (HFO) by ships in the Arctic.

DATES: This public listening session will begin at 10:00 a.m., Eastern Time and end at 12:00 p.m., Eastern Time on Tuesday, September 27, 2016. This meeting is open to the public, either in person or by phone. Seating is limited and the venue has security requirements, so an RSVP is required to assure that space is available, arrange for entry, and to receive teleconference instructions. RSVPs for U.S. citizens are required by September 21, and non-U.S. citizens must RSVP by September 19.

ADDRESSES: The public listening session will be held in Room W22–308 of the United States Department of Transportation Headquarters building in Washington, DC. The United States Department of Transportation Headquarters building is located at 1200 New Jersey Ave. SE., Washington, DC 20590, across from the Navy Yard Metro Station. Due to security requirements, each visitor must RSVP in advance, and present a valid government-issued photo identification (for example, a driver's license or passport) in order to gain entrance to the building. Due to limited seating and security requirements, an RSVP is required by Wednesday, September 21, 2016 for U.S. citizens and by Monday, September 19, 2016 for non-U.S. citizens. Contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) to RSVP and to facilitate the security process related to building access, or to request reasonable accommodation.

FOR FURTHER INFORMATION CONTACT: For additional information about this public listening session you may contact Mr. Wayne Lundy by telephone at 202–372–1379 or by email at *Wayne.M.Lundy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard is hosting a public listening session on the use of heavy fuel oil (HFO) by ships in the Arctic on September 27, 2016. The purpose of this public listening session is for the Coast Guard to gather information on issues relating to the use of heavy fuel oil (HFO) by ships in the Arctic. Please note that there is no obligation to attend and that no specific regulatory or other actions will be presented at this session. The agenda is as follows:

At the onset of the session, the Coast Guard will provide a brief overview regarding the existing measures found in IMO Polar Code—Resolution MSC.385(94), and in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Code) addressing Polar Waters.

Following the Coast Guard's introduction, the public is invited to speak on items relating to the use of HFO by ships. Specifically, the Coast Guard is interested in public viewpoints relating to: (1) Environmental risks to Arctic waters posed by HFO use by ships; (2) potential measures that could be taken to reduce those risks to Arctic waters; and (3) the development, sustainment, and economics of communities that would be directly affected by such measures, particularly remote indigenous populations and business interests vital to remote population centers.

Procedural

This listening session is open to the public. Please note that the public listening session venue has limited seating and security requirements, and thus requires individuals wishing to attend in person to RSVP by Wednesday, September 21, 2016 for U.S. citizens, and by Monday, September 19, 2016 for non-U.S. citizens. There will be audiovisual arrangements available for those interested in making brief (15 minutes or less) presentations. Teleconference information will be made available upon receipt of an RSVP. Additionally, written comments will be accepted both at the listening session and via email. Those interested in making presentations, submitting written comments, or teleconferencing should contact Mr. Wayne Lundy by telephone at (202) 372–1379 or by email at *Wayne.M.Lundy@uscg.mil.* A final agenda including a list of those making presentations will be distributed prior to the meeting. The Coast Guard will consider all information provided as public information.

Please note that the Coast Guard will not be providing comments or responding to information provided at the listening session.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Wayne Lundy at (202) 372–1379 or by email at *Wayne.M.Lundy@uscg.mil* as soon as possible.

Dated: September 12, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2016–22222 Filed 9–14–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

FEMA National Advisory Council (NAC)-Integrated Public Alert and Warning System (IPAWS) Subcommittee

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; request for applicants for appointment to the FEMA National Advisory Council-Integrated Public Alert and Warning System Subcommittee.

SUMMARY: The Federal Emergency Management Agency is requesting qualified individuals interested in serving on the FEMA National Advisory Council (NAC)-Integrated Public Alert and Warning System (IPAWS) Subcommittee to apply for appointment. Pursuant to the *Integrated Public Alert and Warning System Modernization Act of 2015,* the IPAWS Subcommittee will consider common alerting and warning protocols, standards, terminology, and operating procedures for an integrated public alert and warning system.

DATES: Applications will be accepted until 11:59 p.m. EDT on October 6, 2016.

ADDRESSES: The preferred method of submission for application packages is via email, but application packages may also be submitted by fax or U.S. mail. Please submit by only ONE of the following methods:

- *Email: FEMA-NAC@fema.dhs.gov.* Please include "IPAWS Subcommittee Application" on the subject line of the email. Please save materials as one document using the naming convention, "LAST NAME_FIRST NAME", and attach to the email.
- *Fax:* (540) 504–2331.
- *U.S. Mail:* Office of the National Advisory Council, Federal Emergency Management Agency, 8th Floor, 500 C Street SW., Washington, DC 20472–3184.

FOR FURTHER INFORMATION CONTACT: Deana Platt, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 8th Floor, 500 C Street SW., Washington, DC 20472–3184; telephone (202) 646–2700; fax (540) 504–2331; and email *FEMA-NAC@fema.dhs.gov.* For more information on the NAC, visit *http://www.fema.gov/national-advisory-council.*

SUPPLEMENTARY INFORMATION: The NAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix. As required by the *Integrated Public Alert and Warning System Modernization Act of 2015,* the FEMA Administrator established the IPAWS Subcommittee to develop recommendations for an integrated public alert and warning system. The IPAWS Subcommittee will review and make recommendations to the NAC on matters related to common alerting and warning protocols, standards, terminology, and operating procedures. The IPAWS Subcommittee will also make recommendations to the NAC on having the capability to adapt the distribution and content of communications based on locality, risks, or user preferences; to alert and warn individuals with disabilities; incorporate multiple communications technologies; provide alerts to the largest portion of the affected population; promote local and regional community preparedness and response; and provide redundant alert mechanisms.

FEMA is requesting qualified individuals who are interested in serving on the IPAWS Subcommittee to apply for appointment. Individuals selected for appointment will serve as either a Special Government Employee (SGE) or a Representative in one of the following disciplines: State and local government officials; emergency management agencies; emergency response providers; federally recognized Indian tribes and national Indian organizations; communications service providers; vendors, developers, and manufacturers of systems, facilities, equipment, and/or capabilities for the provision of communications services; third-party service bureaus; broadcasting industry (to include public broadcasting); commercial mobile radio service industry; cable industry; satellite industry; national organizations representing individuals with disabilities; blind, deaf, and hearing loss communities; individuals with access and functional needs; elderly; consumer or privacy advocates; and organizations representing individuals with Limited English Proficiency. The Administrator may appoint up to four (4) additional candidates to serve as FEMA Administrator Selections. The appointment will end upon the termination of the IPAWS Subcommittee in April 2019.

If you are interested and qualified based on leadership ability and subject-matter expertise, please apply for consideration of appointment by submitting an application package to the Office of the NAC as listed in the **ADDRESSES** section of this notice. Each application package MUST include the following information:

- Cover letter, addressed to the Office of the NAC, that indicates why you are interested in serving on the IPAWS Subcommittee, and includes the following information: The discipline area(s) being applied for, current position title and organization, home and work addresses, a current telephone number and email address
- Resume or Curriculum Vitae

Incomplete applications will not be considered. Each application will be reviewed based on relevant expertise in the appropriate field, and understanding of public alerts.

Appointees may be designated as a SGE as defined in section 202(a) of title 18, United States Code, or as a Representative member. Candidates selected for appointment as SGEs are required to complete a Confidential Financial Disclosure Form (Office of Government Ethics Form 450) each year. This form can be obtained by visiting the Web site of the Office of Government Ethics (*http://www.oge.gov*). However, please do not submit this form with your application.

The IPAWS Subcommittee will meet approximately four (4) times per year, two in person and two via webinar. Members may be reimbursed for travel expenses and per diem. All travel for IPAWS Subcommittee business must be approved in advance by the Designated Federal Officer.

The Department of Homeland Security (DHS) does not discriminate on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability, genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions. Current DHS and FEMA employees, FEMA Reservists, and DHS and FEMA contractors and potential contractors will not be considered for membership. Federally registered lobbyists may apply for positions designated as Representative appointments but are not eligible for positions that are designated as SGE appointments.

Dated: September 9, 2016.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–22127 Filed 9–14–16; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2016–0055]

Homeland Security Science and Technology Advisory Committee

AGENCY: Science and Technology Directorate, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet on September 29, 2016 virtually. The meeting will be an open session with webinar participation.

DATES: The HSSTAC will virtually meet Thursday, September 29, 2016, from 1:00 p.m.–2:30 p.m.

The meeting may close early if the committee has completed its business.

ADDRESSES: Webinar (Virtual).

FOR FURTHER INFORMATION CONTACT: Michel Kareis, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205, 202–254–5617(Office), 202–254–6176 (Fax) *michel.kareis@hq.dhs.gov* (Email).

I. Background

Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. appendix (Pub. L. 92–463). The committee addresses areas of interest and importance to the Under Secretary for Science and Technology (S&T), such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other Federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

II. Registration

To pre-register for the virtual meeting (webinar) please send an email to: *hsstac@hq.dhs.gov.* The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending. For information on services for individuals with disabilities or to request special assistance at the meeting, please contact Michel Kareis as soon as possible.

To register, email *hsstac*@hq.dhs.gov with the following subject line: RSVP to HSSTAC Meeting. The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending.

III. Public Comment

At the end of each open session, there will be a period for oral statements. Please note that the oral statement period may end before the time indicated, following the last call for oral statements. To register as a speaker, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the "Agenda" below. Written comments must be received by September 12, 2016. Please include the docket number (DHS–2016–0055) and submit via *one* of the following methods:

- *Federal eRulemaking Portal:http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: hsstac@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–254–6176.
- *Mail:* Michel Kareis, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov.*

Docket: For access to the docket to read the background documents or comments received by the HSSTAC, go to *http://www.regulations.gov* and enter the docket number into the search function: DHS–2016–0055.

Agenda

The webinar will consist of a briefing on the Science Advisory Guide for Emergencies (SAGE). The SAGE tool is approved as the S&T process for leadership to attain science support information concerning homeland security incidents/emergencies in order to mitigate, respond, and recover from those incidents. Committee members will be asked to provide recommendations for contacts in one of the 33 incidents as described in the DHS Incident Response Book. An update will be provided for HSSTAC deliverables under development in the following Subcommittees: Commercialization, Social Media Working Group and IOT Smart Cities. A message from Dr. Reginald Brothers will cover the S&T priorities as it relates to HSSTAC. There will be a period for public comment prior to adjourning the meeting.

Dated: September 8, 2016.

Michel Kareis,

Executive Director, Homeland Security Science and Technology Advisory Committee.

[FR Doc. 2016–22214 Filed 9–12–16; 4:15 pm]

BILLING CODE 9110–9F–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTM00000.L111100000.XP0000 16XL1109AF MO#4500098205]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Central Montana Resource Advisory Council Meeting will be held October 12–13, 2016 in Malta, Montana. The meeting on October 12, 2016, will be held from noon to 5:00 p.m., with a 30-minute public comment period at 12:30 p.m. RAC members will take a field trip on October 13, 2016.

ADDRESSES: The meetings will be in the Great Northern Hotel Conference Room at 2 S. 1st St. E., Malta, Montana.

FOR FURTHER INFORMATION CONTACT: Mark Albers, HiLine & Central Districts Manager, Great Falls Field Office, 1101 15th Street North, Great Falls, MT 59401, (406) 791–7789, *malbers@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior, through the BLM, on a variety of management issues associated with public land management in Montana. During these meetings the council is scheduled to participate in, discuss, and act upon these topics or activities. All RAC meetings are open to the public.

Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Authority: 43 CFR 1784.4–2.

Mark K. Albers,

HiLine & Central Districts Manager.

[FR Doc. 2016–22180 Filed 9–14–16; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–WASO–NRSS–NSNSD–21927; PPWONRADN1, PPMRSNR1Y.NS000 (166)]

Proposed Information Collection; Natural Sounds/Quiet Valuation Survey

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on November 30, 2016. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by November 14, 2016.

ADDRESSES: Direct all written comments on this IC to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection NATSOUNDS in the subject line.

FOR FURTHER INFORMATION CONTACT: Frank Turina, Night Skies and Natural Sounds Division, National Park Service, 1201 Oakridge Drive, Fort Collins, Colorado 80525 (mail); *Frank_Turina@nps.gov* (email); or (970) 225–3530 (phone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Organic Act of 1916 (54 U.S.C. 100701), the NPS is charged with conserving the scenery, natural and historic objects, and wildlife in its units. The acoustical environment or soundscape is a fundamental aspect of

NPS units and critical to visitors' interaction with and interpretation of said resources. While the NPS has policies in place to monitor and manage acoustical conditions, it does not have information on how visitors value preserving natural sounds and/or reducing noise impacts. NPS plans to conduct a stated-preference survey of visitors in two park units in order to estimate individual values for maintenance or improvement of acoustical conditions within a national park setting.

The purpose of this IC is to continue survey development and pre-testing activities that were initiated in 2013. This continuation will involve a series of focus groups in two NPS units. The intent of the focus groups is to refine and test existing survey materials. Specifically, previous pre-testing efforts indicated that further refinement and testing of stated–preference questions was necessary. Best practice guidelines in the conduct of stated-preference studies require that survey content, language and instructions be clearly understood by respondents so that the results are as accurate and reliable as possible.

II. Data

OMB Control Number: 1024–0269.

Title: Natural Sounds/Quiet Valuation Survey.

Type of Request: Renewal of a currently approved collection.

Affected Public: Park visitors; individual and general households.

Respondent Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Number of Annual Responses: 80 respondents. This collection will involve eight two-hour focus group sessions. We estimate that each group will have at most 10 participants.

Annual Burden Hours: 160 hours; two hours per respondent.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 12, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–22223 Filed 9–14–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A0067F 167S180110; S2D2D SS08011000 SX066A00 33F 16XS501520]

Notice of Proposed Information Collection; Request for Comments for 1029–0116

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed approval from the Office of Management and Budget (OMB) to continue the collection of information for the Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights.

DATES: Comments on the proposed information collection must be received by November 14, 2016, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or by email to *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for renewal. The collection is contained in 30 CFR part 774—Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights.

OSMRE will revise burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSMRE will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSMRE's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR part 774—Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights.

OMB Control Number: 1029–0116.

Summary: Sections 506 and 511 of Public Law 95–87 provide that persons seeking permit revisions; renewals; or transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 3,510 responses from permit applicants and 3,343 responses from State regulatory authorities.

Total Annual Burden Hours: 242,179.

Total Annual Non-Wage Costs: $902,920.

Dated: September 9, 2016.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2016–22189 Filed 9–14–16; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–467 and 731–TA–1164–1165 (Review)]

Narrow Woven Ribbons With Woven Selvedge From China and Taiwan

Determinations

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the countervailing duty order on narrow woven ribbons with woven selvedge from China and the antidumping duty orders on narrow woven ribbons with woven selvedge from China and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on August 3, 2015 (80 FR 46048) and determined on November 6, 2015 that it would conduct full reviews (80 FR 73829, November 25, 2015). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 29, 2016 (81 FR 10279). The hearing was held in Washington, DC, on July 12, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on September 9, 2016. The views of the Commission are contained in USITC Publication 4634 (September 2016), entitled *Narrow Woven Ribbons with Woven Selvedge from China and Taiwan: Investigation Nos. 701–TA–467 and 731–TA–1164–1165 (Review).*

By order of the Commission.

Issued: September 9, 2016.

Katherine M. Hiner,

Supervisory Attorney Advisor.

[FR Doc. 2016–22144 Filed 9–14–16; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–556 and 731–TA–1311 (Final)]

Truck and Bus Tires From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–556 and 731–TA–1311 (Final) pursuant to the Tariff Act of 1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of truck and bus tires from China, provided for in statistical reporting numbers 4011.20.1015 and 4011.20.5020 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be subsidized and sold at less-than-fair-value.[1]

DATES: *Effective Date:* September 6, 2016.

FOR FURTHER INFORMATION CONTACT: Nathanael N. Comly ((202) 205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of truck and bus tires, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on January 29, 2016, by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, PA.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this investigation may be tube-type, tubeless, radial, or non-radial. Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. For a full description of the scope of these investigations, including product exclusions, see *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination,* 81 FR 61186, September 6, 2016.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on January 5, 2017, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, January 24, 2017, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 18, 2017. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on January 20, 2017, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is January 12, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 31, 2017. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before January 31, 2017. On February 14, 2017, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 16, 2017, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 12, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–22230 Filed 9–14–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–554 and 731–TA–1309 (Final)]

Biaxial Integral Geogrid Products From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–554 and 731–TA–1309 (Final) pursuant to the Tariff Act of 1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of biaxial integral geogrid products from China, provided for in subheading 3926.90.9995 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be subsidized and sold at less-than-fair-value.[1] [2]

DATES: Effective on August 22, 2016.

FOR FURTHER INFORMATION CONTACT: Hangyul Chang (202–205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

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[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as certain biaxial integral geogrid products. For a full description of the scope of these investigations, including product exclusions, see *Certain Biaxial Integral Geogrid Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 81 FR 56584, August 22, 2016.

[2] Certain biaxial integral geogrid products may also enter under the following HTS subheadings: 3920.20.0050 and 3925.90.0000.

General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of biaxial integral geogrid products, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on January 13, 2016, by Tensar Corporation, Morrow, Georgia.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 7, 2016, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, December 20, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 15, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on December 16, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 14, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 29, 2016. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before December 29, 2016. On January 26, 2017, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 30, 2017, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 9, 2016.

Katherine M. Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016–22143 Filed 9–14–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 9, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United*

States and State of Ohio v. *Rutgers Organics Corporation,* Civil Action No. 4:16–cv–02254.

The proposed Consent Decree resolves claims of Plaintiff, the United States of America, and co-Plaintiff, the State of Ohio, against Defendant, Rutgers Organics Corporation (Rutgers), under the Comprehensive Environmental Response, Compensation, and Liability Act and the Federal Water Pollution Control Act, in a Complaint filed simultaneously with the lodging of the proposed Consent Decree. Under the proposed Decree, Rutgers agrees to complete the cleanup of the Nease Chemical Superfund Site (Site) near Salem, Ohio, to restore injured natural resources at the Site and nearby areas, and to reimburse federal and state agencies their past response and assessment costs.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Ohio* v. *Rutgers Organics Corporation,* D.J. Ref. No. 90–11–2–608/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $150.50 (25 cents per page reproduction cost) or $31.75 without appendices, payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–22171 Filed 9–14–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Youthful Offender Grants Management Information System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "Youthful Offender Grants Management Information System," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 17, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201607-1205-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Youthful Offender Grants Management Information System. This data collection includes participant characteristics, services provided, and participant outcomes information, as well as quarterly progress and narrative reports and annual recidivism reports submitted by Workforce Innovation and Opportunity Act (WIOA) funded youthful offender grant recipients. This information collection has been classified as a revision, because of changes to the intake questions when persons enroll in the program and additional outcome tracking requirements. WIOA sections 185 and 189 authorize this information collection. *See* 29 U.S.C. 3245 and 3248.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0513. The current approval is scheduled to expire on September 30, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 22, 2016 (81 FR 23751).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0513. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Youthful Offender Grants Management Information System.

OMB Control Number: 1205–0513.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—not-for-profit institutions.

Total Estimated Number of Respondents: 12,336.

Total Estimated Number of Responses: 36,672.

Total Estimated Annual Time Burden: 51,096 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 9, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–22168 Filed 9–14–16; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–066)]

NASA Advisory Council; Human Exploration and Operations Committee; Research Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Research Subcommittee of the Human Exploration and Operations Committee (HEOC) of the NASA Advisory Council. This Subcommittee reports to the HEOC.

DATES: Tuesday October 11, 2016, 9:00 a.m. to 4:30 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 7H41, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546 (202) 358–0826, or *bcarpenter@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 844–467–6272 or toll number 720–259–6462, pass code 535959, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com,* the meeting number is 996 903 003, and the password is October11!

The agenda for the meeting includes the following topics:

—Evolution of the Human Exploration and Operations Committee Research Subcommittee
—Low Earth Orbit Commercialization
—Priorities for Human Research in Exploration Mission—Series Missions
—International Collaboration in Fundamental Physics

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the "List of the Acceptable Documents" on Form I–9]. Non-compliant states/territories are: American Samoa, Minnesota, Missouri, and Washington. Foreign Nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Dr. Bradley Carpenter via email at *bcarpenter@nasa.gov* or by fax at (202) 358–2886. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation no less than 3 working days prior to the meeting to Dr. Carpenter. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–22235 Filed 9–14–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–065)]

NASA Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, October 6, 2016, 10:15 a.m. to 11:30 a.m., Local Time.

ADDRESSES: NASA Johnson Space Center, Building 1, Room 966, 2101 NASA Parkway, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Aerospace Safety Advisory Panel Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–4452, or email at *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Fourth Quarterly Meeting for 2016. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

- Updates on the Exploration Systems Development
- Updates on the Commercial Crew Program
- Updates on the International Space Station Program

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number (800) 857–7040; pass code 4408302. Attendees will be required to sign a visitor's register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Due to the Real ID Act, Public Law 109–13, any attendees with driver's licenses issued from non-compliant states/territories must present a second form of ID (Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the "List of the Acceptable Documents" on Form I–9). Non-compliant states/territories are: American Samoa, Minnesota, Missouri, and Washington. Any member of the public desiring to attend the ASAP 2016 Fourth Quarterly Meeting at the Johnson Space Center must provide their full name and company affiliation (if applicable) to Ms. Stephanie Castillo at *stephanie.m.castillo@nasa.gov* or by fax (281) 483–2200 or telephone (281) 483–3341 by September 29, 2016. Foreign Nationals attending the meeting will be required to provide a copy of their passport and visa, in addition to providing the following information by September 21, 2016: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); and title/position of attendee. Additional information may be requested. Permanent Residents should provide this information: Green card number and expiration date. Persons with disabilities who require assistance should indicate this. Photographs will only be permitted during the first 10 minutes of the meeting.

At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed five (5) minutes in length. To do so, members of the public must contact Ms. Marian Norris at *mnorris@nasa.gov* or at (202) 358–4452 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–22234 Filed 9–14–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold fifteen meetings of the Humanities Panel, a federal advisory committee, during October, 2016. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at the National Endowment for the Humanities at Constitution Center at 400 7th Street SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. *Date:* October 6, 2016.

This meeting will discuss applications on the subjects of U.S. History and Culture: Military and Political History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

2. *Date:* October 13, 2016.

This meeting will discuss applications on the subject of the History of Science, Medicine and the Environment, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

3. *Date:* October 14, 2016.

This meeting will discuss applications on the subject of U.S. History and Culture: Early American History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

4. *Date:* October 18, 2016.

This meeting will discuss applications on the subject of History for Media Projects: Development Grants, submitted to the Division of Public Programs.

5. *Date:* October 20, 2016.

This meeting will discuss applications on the subject of History for Media Projects: Production Grants, submitted to the Division of Public Programs.

6. *Date:* October 20, 2016.

This meeting will discuss applications on the subject of U.S. History and Culture: Social History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

7. *Date:* October 21, 2016.

This meeting will discuss applications on the subjects of Music and Performing Arts, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

8. *Date:* October 24, 2016.

This meeting will discuss applications on the subjects of Immigration, Race, and Ethnicity, for the Public Humanities Projects—Community Conversations grant program (implementation grants), submitted to the Division of Public Programs.

9. *Date:* October 25, 2016.

This meeting will discuss applications on the subject of History, for the Public Humanities Projects—Historic Places grant program (planning grants), submitted to the Division of Public Programs.

10. *Date:* October 25, 2016.

This meeting will discuss applications on the subjects of Art and Architectural History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

11. *Date:* October 26, 2016.

This meeting will discuss applications on the subject of Indigenous Studies, for the Humanities

Collections and Reference Resources grant program submitted to the Division of Preservation and Access.

12. *Date:* October 26, 2016.

This meeting will discuss applications on the subjects of U.S. History and Civics, for the Public Humanities Projects—Community Conversations grant program (implementation grants), submitted to the Division of Public Programs.

13. *Date:* October 27, 2016.

This meeting will discuss applications on the subject of American Studies: Media Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

14. *Date:* October 27, 2016.

This meeting will discuss applications on the subject of Culture, for Media Projects: Production Grants, submitted to the Division of Public Programs.

15. *Date:* October 31, 2016.

This meeting will discuss applications on the subject of Culture for Media Projects: Development Grants, submitted to the Division of Public Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. The Committee Management Officer, Elizabeth Voyatzis, has made this determination pursuant to the authority granted her by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: September 12, 2016.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2016–22192 Filed 9–14–16; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) Advisory Committee Meeting (#1173).

Dates/Time: October 13, 2016; 8:00 a.m.–Noon; October 14, 2016; 1:30 p.m.–5:30 p.m.

Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230.

To help facilitate your entry into the building, please contact Vickie Fung (*vfung@nsf.gov*) on or prior to October 10, 2016.

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA)/Office of Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Contact Information: 703–292–8040/*banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

- Opening Statement and Chair Report by the CEOSE Chair
- NSF Executive Liaison Report
- Updates from the Federal Liaisons
- Panel Presentations: NSF INCLUDES (Inclusion across the Nation of Communities of Learners of Underrepresented Discovers in Engineering and Science)
- Discussion: 2015–2016 CEOSE Biennial Report to Congress
- Discussion: An Accountability System for Broadening Participation in STEM
- Discussion: Reports by CEOSE Liaisons to NSF Advisory Committees
- Working Session: Chapter Three of the 2015–2016 CEOSE Biennial Report to Congress

Dated: September 12, 2016

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–22213 Filed 9–14–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333; NRC–2016–0195]

James A. FitzPatrick Nuclear Power Plant; Consideration of Approval of Transfer of License and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for direct transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by Entergy Nuclear Operations, Inc. (ENO), and Exelon Generation Company, LLC (Exelon) on August 18, 2016. The application seeks NRC approval of the direct transfer of DPR–59 and SFGL–12 for James A. FitzPatrick Nuclear Power Plant (FitzPatrick), from the current holder, ENO, to Exelon. The NRC is also considering amending the renewed facility operating license for administrative purposes to reflect the proposed transfer.

DATES: Comments must be filed by October 17, 2016. A request for a hearing must be filed by October 5, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0195. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearingdocket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Diane Render, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3629, email: *Diane.Render@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0195 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0195.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for the direct license transfer of FitzPatrick is available in ADAMS under Accession No. ML16235A081.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0195 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering the issuance of an order under § 50.80 of title 10 of the *Code of Federal Regulations* (10 CFR) approving the direct transfer of control of FitzPatrick, currently held by ENO. The transfer would be to Exelon. The NRC is also considering amending the renewed facility operating licenses for administrative purposes to reflect the proposed transfer.

Following approval of the proposed direct transfer of control of the license, Exelon would acquire ownership of the facility. Exelon would be responsible for the operation and maintenance of FitzPatrick.

No physical changes to FitzPatrick or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an Independent Spent Fuel Storage Installation, which does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to issuance of the amendment to the subject facility operating license or combined license. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed within 20 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 20 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 20-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 5, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated August 18, 2016.

Dated at Rockville, Maryland, this 9th day of September 2016.

For the Nuclear Regulatory Commission.

Diane Render,

Project Manager, Plant Licensing Branch I–1, Division of Operator Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–22229 Filed 9–14–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2011–0024]

In the Matter of Duke Energy Florida, Inc., and Seminole Electric Cooperative, Inc., Crystal River Unit 3 Nuclear Generating Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the direct transfer of the 1.6994 percent of Crystal River Unit 3 Nuclear Generating Plant (CR–3) currently owned by Seminole Electric Cooperative, Inc. (SEC), to Duke Energy Florida, Inc. (DEF). The NRC is also amending the facility-operating license for administrative purposes to reflect the license transfer of the 1.6994 percent ownership from SEC to DEF. The NRC confirmed that the transfer of the license is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission. The order approving the transfer of the 1.6994 percent of CR–3 currently owned by SEC, to DEF became effective on August 10, 2016.

DATES: The Order was issued on August 10, 2016, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2011–0024 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0024. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; or via email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at: *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at: 1–800–397–4209, 301–415–4737, or via email to: *pdr.resource@nrc.gov.* The license transfer Order, the NRC safety evaluation supporting the staff's findings, and the conforming license amendment are available in ADAMS under Accession Nos. ML16123A073, ML16123A074, and ML16123A057, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John B. Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3017, email: *John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 1st day of September 2016.

For the U.S. Nuclear Regulatory Commission.

Andrea L. Kock,

Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Order Approving the Transfer of License and Conforming Amendment

United States of America

Nuclear Regulatory Commission

In the Matter of Duke Energy Florida, Inc.; Crystal River Unit 3 Nuclear Generating Plant

Docket No. 50–302
License No. DPR–72

Order Approving Transfer of License and Conforming Amendment

I.

Duke Energy Florida, Inc. (DEF or the applicant) and Seminole Electric Cooperative, Inc., are holders of Facility Operating License No. DPR–72, which authorizes the possession of the Crystal River Unit 3 Nuclear Generating Plant (CR–3). Facility Operating License No. DPR–72 also authorizes DEF (currently owner of 98.3006 percent of CR–3) to use and operate CR–3. CR–3 is located in Red Level, Florida, in Citrus County, about 5 miles south of Levy

County. The site is 7.5 miles northwest of Crystal River, Florida, and 90 miles north of St. Petersburg, Florida. CR–3 is situated on the Gulf of Mexico, within the Crystal River Energy Complex.

CR–3 has been shut down since September 26, 2009, and the final removal of fuel from the reactor vessel was completed on May 28, 2011. By letter dated February 20, 2013, the licensee submitted a certification to the U.S. Nuclear Regulatory Commission (NRC) of permanent cessation of power operations and the removal of fuel from the reactor vessel, pursuant to Sections 50.82(a)(1)(i) and 50.82(a)(1)(ii) of Title 10 of the Code of Federal Regulations (10 CFR). Upon docketing of this certification, the 10 CFR part 50 license for CR–3 no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2).

II.

By application dated July 28, 2015, as supplemented by letter dated September 22, 2015 (collectively, the application), DEF requested that the NRC approve the direct transfer of control of Facility Operating License No. DPR–72 for CR–3, to the extent held by Seminole Electric Cooperative, Inc., to DEF. Seminole Electric Cooperative, Inc. currently owns 1.6994 percent of CR–3. As a result of the transaction, DEF will become the sole owner of CR–3.

The applicant also requested approval of a conforming administrative license amendment that would remove the references to Seminole Electric Cooperative, Inc., in the license. DEF did not propose any physical changes to the facilities or operational changes in the application. After completion of the proposed transfer, DEF will be the sole owner of CR–3, and DEF will remain the operator of the facility.

DEF requested approval of the direct transfer of the facility operating license and the conforming license amendment pursuant to 10 CFR 50.80, "Transfer of licenses," and 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit." A notice entitled, "Crystal River Nuclear Generating Plant, Unit 3; Consideration of Approval of Transfer of License and Conforming Amendment," was published in the **Federal Register** on January 4, 2016 (81 FR 98). The NRC did not receive any public comments regarding the proposed license transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission provides its consent in writing. Upon review of the information in the licensee's application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that DEF is qualified to hold the ownership interests in the facility previously held by Seminole Electric Cooperative, Inc. The NRC staff has also determined that the direct transfer of ownership interests in the facility to DEF, as described in the application, is otherwise consistent with applicable provisions of laws, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the applications, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by the NRC safety evaluation dated August 10, 2016.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, *IT IS HEREBY ORDERED* that the direct transfer of the license, as described herein, to DEF is approved, subject to the following condition:

1. DEF shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Material Safety and Safeguards that it has obtained the insurance required of a licensee under 10 CFR part 140, "Financial Protection Requirements and Indemnity Agreements," in the appropriate amount pursuant to the exemption to 10 CFR 140.11(a)(4) granted to DEF by NRC letter dated April 27, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14183B338).

It is further ordered that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct license transfer is approved. The license amendment shall be issued and made effective at the time the proposed direct transfer is completed.

It is further ordered that after receipt of all required regulatory approvals of the proposed direct transfer action, DEF shall inform the Director of the Office of Nuclear Material Safety and Safeguards in writing of such receipt, and the date of closing of the transfer no later than one business day prior to the date of the closing of the direct transfer. Should the direct transfer not be completed within 1 year of this Order's date of issue, this Order shall become null and void, provided, however, that upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 28, 2015 (ADAMS Accession No. ML15216A123), as supplemented by letter dated September 22, 2015 (ADAMS Accession No. ML15265A590), and the safety evaluation dated August 10, 2016 (ADAMS Accession No. ML16173A019), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Room O–1 F21 (First Floor), Rockville, Maryland, and accessible electronically though the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209, 301–415–4737, or by email at *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of August 2016.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–22232 Filed 9–14–16; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before October 17, 2016.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov*. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Health History Form.

OMB Control Number: 0420–0510.

Type of Request: Revison.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Potential and current volunteers.

Burdent to the Public:

a. Estimated number of respondents.	23,000.
b. Estimated average burden per response.	45 minutes.
c. Frequency of response	One Time.
d. Annual reporting burden ...	17,250 hours.

General Description of Collection: The information collected is required for consideration for Peace Corps Volunteer service. The information in the Health History Form, will be used by the Peace Corps Office of Medical Services to determine whether an Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems and, if so, to establish the level of medical and programmatic support, if any, that may be required to reasonably accommodate the Applicant.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on August 30, 2016.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2016–22159 Filed 9–14–16; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before November 14, 2016.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Report of Dental Examination.

OMB Control Number: 0420–0546.

Type of Request: Revision.

Affected Public: Individuals/Physicians.

Respondents Obligation to Reply: Voluntary.

Respondents: Potential and current volunteers.

Burden to the Public:

a. *Estimated number of respondents:* 5,600.

b. *Estimated average burden per response:* 135 minutes.

c. *Frequency of response:* One time.

d. *Annual reporting burden:* 12,600 hours.

General Description of Collection: The Peace Corps Office of Medical Services is responsible for the collection of Applicant dental information, using the Report of Dental Exam "Dental Exam" form. The Dental Exam form is completed by the Applicant's examining dentist. The results of the examinations are used to ensure that Applicants for Volunteer service will, with reasonable accommodation, be able to serve in the Peace Corps without jeopardizing their health.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on August 30, 2016.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2016–22160 Filed 9–14–16; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before November 14, 2016.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Peace Corps Volunteer Application Form.

OMB Control Number: 0420–0005.

Type of Request: Revison.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Potential Volunteers.

Burdent to the Public:

a. Estimated number of respondents.	23,000.
b. Estimated average burden per response.	60 minutes.
c. Frequency of response	One Time.
d. Annual reporting burden	23,000 hours.

General description of collection: The information collected by the Volunteer Application is used by the Peace Corps to collect essential information from individual applicants, including technical and language skills, and availability for Peace Corps service. The information is used by the Peace Corps Office of VRS in its assessment of an individual's qualifications to serve as a Peace Corps Volunteer, including practical and cross-cultural experience, maturity, motivation and commitment. Selection for Peace Corps service is based on that assessment.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on August 30, 2016.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2016–22142 Filed 9–14–16; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before October 17, 2016.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Durable Medical Equipment (DME).

OMB Control Number: 0420–XXXX.

Type of Request: New information collection.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Potential and current volunteers.

Burdent to the Public:

a. *Estimated number of respondents:* 400.

b. *Estimated average burden per response:* 75 minutes.

c. *Frequency of response:* One Time.

d. *Annual reporting burden:* 500 hours.

General description of collection: Durable Medical Equipment (DME) is any equipment that provides therapeutic benefits to a patient in need because of certain medical conditions and/or illness. They consist of items that are primarily and customarily used to serve a medical purpose; are not useful to a person in the absence of illness or injury; are ordered or prescribed by a physician; are reusable; can stand repeated use, and are appropriate for use in the home. Other devices covered in this guidance include prosthetic equipment (cardiac pacemakers), hearing aids, orthotic items (artificial devices such as braces and splints), and prostheses (artificial body parts). The information collected will assist in the determination of Peace Corps eligibility. If eligible, it will assist with ongoing care during service. All applicants to the Peace Corps must have a medical clearance that will determine their ability to serve in a particular country.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on August 30, 2016.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2016–22161 Filed 9–14–16; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2014–75; CP2015–108]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 16, 2016 (Comment due date applies to all Docket Nos. listed above).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2014–75; *Filing Title:* Notice of United States Postal Service of Amendment to First-Class Package Service Contract 37, with Portions Filed Under Seal; *Filing Acceptance Date:* September 8, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* September 16, 2016.
2. *Docket No(s).:* CP2015–108; *Filing Title:* Notice of United States Postal Service of Amendment to Priority Mail Contract 134, with Portions Filed Under Seal; *Filing Acceptance Date:* September 8, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* September 16, 2016.

This Notice will be published in the Federal Register.

Stacy L. Ruble,
Secretary.

[FR Doc. 2016–22121 Filed 9–14–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–193 and CP2016–276; MC2016–194 and CP2016–277; MC2016–195 and CP2016–278]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 19, 2016 (Comment due date applies to all Docket Nos. listed above).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceedings(s)

1. *Docket No(s).:* MC2016–193 and CP2016–276; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 238 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 9, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Natalie R. Ward; *Comments Due:* September 19, 2016.
2. *Docket No(s).:* MC2016–194 and CP2016–277; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 31 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 9, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Natalie R. Ward; *Comments Due:* September 19, 2016.
3. *Docket No(s).:* MC2016–195 and CP2016–278; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 61 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 9, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* September 19, 2016.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,
Secretary.

[FR Doc. 2016–22208 Filed 9–14–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 9, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 61 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–195, CP2016–278.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–22141 Filed 9–14–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date* September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 9, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 238 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–193, CP2016–276.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–22139 Filed 9–14–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 9, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 31 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–194, CP2016–277.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–22140 Filed 9–14–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78795; File No. SR–BatsBYX–2016–25]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.27(b) Regarding the Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

September 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2016, Bats BYX Exchange, Inc. ("Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Exchange Rule 11.27(b) regarding the data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, the Exchange, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder,[7] the Plan to Implement a Tick Size Pilot Program (the "Plan").[8] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[9] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[9] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[13] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[14] will apply to the Trade-at requirement.

The Plan also requires a Trading Center[15] or a Market Maker[16] to collect and transmit certain data to its designated examining authority ("DEA"), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid and National Best Offer quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[17] On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.[18] As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

On March 16, 2016, the Exchange filed with the Commission a proposed rule change to adopt Exchange Rule 11.27(b) to implement the data collection requirements of the Plan.[19] On December 9, 2015, FINRA, on behalf of the Plan Participants, submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.[20]

The Exchange now proposes to further amend Rule 11.27(b) to modify additional data collection and reporting requirements.[21] First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. The Exchange and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, *i.e.*, without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. The Exchange, therefore, proposes to modify Supplementary Material .04 [sic] to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. The Exchange and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than $0.10 away from the NBBO for purposes of Appendix B reporting. The Exchange therefore proposes to amend Supplementary Material [sic].06 to provide that limit orders priced more than $0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and The Exchange and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

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[11] *See* Section VI(B) of the Plan.

[12] *See* Section VI(C) of the Plan.

[13] *See* Section VI(D) of the Plan.

[14] 17 CFR 242.611.

[15] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[16] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[17] *See* Approval Order at 27533 and 27545.

[18] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4–657).

[19] *See* Securities Exchange Act Release No. 77418 (March 22, 2016), 81 FR 17213 (March 28, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–BatsBYX–2016–01).

The Exchange also submitted a proposed rule change to implement the quoting and trading requirements of the Plan. *See* Securities Exchange Act Release No. 77793 (May 10, 2016), 81 FR 30366 (May 16, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-BatsBYX–2016–07).

[20] *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted the Exchange a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, the Exchange, dated March 22, 2016 ("Exemption Letter").

[21] The Exchange notes that, in connection with this proposed rule change, FINRA, on behalf of the Plan Participants, intends to file an exemptive request seeking relief from certain of the Plan's data collection requirements.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within $0.10 of the NBBO) (14). The Exchange and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are ''resting.'' The Exchange, therefore, proposes to amend Supplementary Material .06 [sic] to make this change.

In the fourth change, the Exchange proposes to add new Supplementary Material [sic].09 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. The Exchange and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. The Exchange is therefore proposing this change as part of Supplementary Material [sic].09. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. The Exchange and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and the Exchange is therefore proposing this change as part of Supplementary Material [sic].09.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the National Best Bid or National Best Offer (NBBO) at the time of or immediately before the trade for both share and trade participation calculations. The Exchange and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. The Exchange therefore proposes to make this change as part of Supplementary Material [sic].09.

Finally, the Exchange proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Supplementary Material [sic.10 provides that Pre-Pilot Data Collection Securities are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Exchange and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. According, the Exchange is revising Supplementary Material [sic].10 (which will be re-numbered as Supplementary Material [sic].11) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.[22]

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness. The Exchange has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[23] in general, and furthers the objectives of Section 6(b)(5) of the Act[24] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how the Exchange and Participants that operate Trading Centers collect and report data. The

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[22] After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. The Exchange and the other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period—*i.e.,* September 3, 2016—the Exchange and the Exchange members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using the Exchange's published Pre-Pilot Data Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

Exchange notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and Exchange Rule 11.27(b). In addition, the proposed rule change applies equally to all similarly situated members. Therefore, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) [26] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) [27] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[28] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that so that the proposed rule change can become operative on August 30, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[30]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBYX–2016–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2016–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2016–25 and should be submitted on or before October 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22145 Filed 9–14–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78808; File No. SR–NSCC–2016–004]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Describe the Backtesting Charge and the Bank Holiday Charge That May Be Imposed on Members

September 9, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2016, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Rules and Procedures of NSCC ("NSCC Rules") [3] in order to include two margin charges (the "Backtesting Charge" and "Bank

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[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(3)(C).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NSCC Rules are available at *http://www.dtcc.com/legal/rules-and-procedures.* Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the NSCC Rules.

Holiday Charge" as further described below) that may be imposed on NSCC Members. The Backtesting Charge is assessed for those Members whose portfolios experience backtesting deficiencies over the prior 12-month period, as described further below. The Backtesting Charge is calculated to mitigate exposures to the Corporation caused by settlement risks that may not be adequately captured by the Corporation's portfolio volatility model. The Bank Holiday Charge is applied to all NSCC Members on the business day prior to any day on which the U.S. equities markets are open for trading, but the Board of Governors of the Federal Reserve System observes a holiday and banks are closed ("Holiday"). The Bank Holiday Charge addresses the risk exposure that a Member's trading activity on the applicable Holiday poses to the Corporation. The proposed rule change would amend NSCC Procedure XV to include the Backtesting Charge and Bank Holiday Charge as additional charges that may be added to its Members' Clearing Fund Required Deposit, including the manner and circumstances in which NSCC calculates and imposes such charges. NSCC is filing this proposed rule change in order to provide transparency in the NSCC Rules with respect to these existing charges, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change provides transparency in the NSCC Rules with respect to the Backtesting Charge and the Bank Holiday Charge, two margin charges that NSCC may temporarily impose on a Member as part of such Member's Required Deposit to the NSCC Clearing Fund.

NSCC may impose the Backtesting Charge on an NSCC Member when the Corporation has observed deficiencies in the backtesting of such Member's Required Deposit over the prior 12-month period, such that NSCC determines the value-at-risk ("VaR") margin charge being calculated for that Member may not fully address the projected liquidation losses estimated from that Member's settlement activity.

The Bank Holiday Charge addresses the risk exposure that occurs on Holidays when NSCC is unable to collect Clearing Fund from its Members. NSCC imposes the Bank Holiday Charge on all Members to cover the additional day of exposure that is not contemplated in the prior day's VaR charge.

(i) Background

A. Backtesting and the Required Deposit

NSCC's Clearing Fund addresses potential Member exposure through a number of risk-based component charges (as margin) calculated and assessed daily. Each of the component charges collectively constitute [sic] a Member's Required Deposit. The objective of the Required Deposit is to mitigate potential losses to NSCC associated with liquidation of the Member's portfolio in the event that NSCC ceases to act for a Member (hereinafter referred to as a "default"). NSCC determines Required Deposit amounts using a risk-based margin methodology that is intended to capture market price risk. The methodology uses historical market moves to project or forecast the potential gains or losses on the liquidation of a defaulting Member's portfolio, assuming that a portfolio would take three days to liquidate or hedge in normal market conditions. The projected liquidation gains or losses are used to determine the Member's Required Deposit, which is calculated to cover projected liquidation losses at a 99 percent confidence level. The aggregate of all Members' Required Deposits constitutes NSCC's Clearing Fund, which NSCC would be able to access should a defaulting Member's own Required Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.

NSCC employs daily backtesting to determine the adequacy of each Member's Required Deposit. NSCC compares the Required Deposit[4] for each Member with the simulated liquidation gains/losses using the actual positions in the Member's portfolio, and the actual historical security returns. NSCC investigates the cause(s) of any backtesting deficiencies. As a part of this investigation, NSCC pays particular attention to Members with backtesting deficiencies that bring the results for that Member below the 99 percent confidence target (*i.e.,* greater than two backtesting deficiency days in a rolling twelve-month period) to determine if there is an identifiable cause of repeat backtesting deficiencies. NSCC also evaluates whether multiple Members may experience backtesting deficiencies for the same underlying reason.

While multiple factors may contribute to a Member's backtesting deficiency, NSCC has observed that some Members with position increases after the calculation of their Required Deposit may incur backtesting deficiencies due to the additional exposure that is not mitigated until the collection of the Required Deposit on the next business day.

B. Calculation of the Backtesting Charge

The objective of the Backtesting Charge is to increase Required Deposits for Members that are likely to experience backtesting deficiencies on the basis described above by an amount sufficient to maintain such Member's backtesting coverage above the 99 percent confidence threshold. Because the settlement activity and size of the backtesting deficiencies varies among impacted Members, NSCC must assess a Backtesting Charge that is specific to each impacted Member. To do so, NSCC examines each impacted Member's historical backtesting deficiencies observed over the prior 12-month period to identify the three largest backtesting deficiencies that have occurred during that time. The presumptive Backtesting Charge amount equals that Member's third largest historical backtesting deficiency, subject to adjustment as further described below. NSCC believes that applying an additional margin charge equal to the third largest historical backtesting deficiency to a Member's Required Deposit would bring the Member's historically-observed backtesting coverage above the 99 percent target.[5] If assessed, the resulting Backtesting Charge is added to the Required Deposit for such Member determined pursuant to NSCC's risk-based margining methodology, and is imposed on a daily basis for a one-month period.

This charge is only applicable to those Members whose overall 12-month trailing backtesting coverage falls below the 99 percent coverage target.

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[4] For backtesting comparisons, NSCC uses the Required Deposit amount, without regard to the actual collateral posted by the Member.

[5] Each occurrence of a backtesting deficiency reduces a Member's overall backtesting coverage by 0.4 percent (1 exception/250 observation days). Accordingly, an increase equal to the third largest backtesting deficiency would bring backtesting coverage up to 99.2 percent.

Although the third largest historical backtesting deficiency for a Member is used as the Backtesting Charge in most cases, NSCC retains discretion to adjust the charge amount based on other circumstances that may be relevant for assessing whether an impacted Member is likely to experience future backtesting deficiencies and the estimated size of such deficiencies. Examples of relevant circumstances that would be considered in calculating the final, applicable Backtesting Charge amount include material differences in the three largest backtesting deficiencies observed over the prior 12-month period, variability in the net settlement activity after the collection of the Member's Required Deposit, seasonality in observed backtesting deficiencies and observed market price volatility in excess of the Member's historical VaR charge. Based on NSCC's assessment of the impact of these circumstances on the likelihood of, and estimated size of, future backtesting deficiencies for a Member, NSCC may, in its discretion, adjust the Backtesting Charge for such Member in an amount that NSCC determines to be more appropriate for maintaining such Member's backtesting results above the 99 percent coverage threshold (including a reasonable buffer).

C. Communication With Members and Imposition of the Backtesting Charge

If NSCC determines that a Backtesting Charge should apply to a Member that was not assessed a Backtesting Charge during the immediately preceding month or that the Backtesting Charge applied to a Member during the previous month should be increased, NSCC will notify the Member on or around the 25th calendar day of the month prior to the assessment of the Backtesting Charge, or prior to the increase to the Backtesting Charge.

NSCC imposes the Backtesting Charge as an additional charge applied to each impacted Member's Required Deposit on a daily basis for a one month period, and reviews each applied Backtesting Charge each month. If an impacted Member's trailing 12-month backtesting coverage exceeds 99 percent (without taking into account historically-imposed Backtesting Charges), the Backtesting Charge is removed.

D. Holidays and the Required Deposit

As described above, NSCC determines its Members' Required Deposit amounts using a risk-based margin methodology that is intended to capture market price risk, assuming that a portfolio would take three days to liquidate or hedge in normal market conditions.

The Bank Holiday Charge may be applied on the business day prior to any Holiday. This charge approximates the exposure that a Member's trading activity on the applicable Holiday could pose to NSCC. Since NSCC cannot collect margin on the Holiday, the Bank Holiday Charge is due on the business day prior to the applicable Holiday.

E. Calculation and Notification of the Holiday Charge

NSCC would determine the appropriate methodology for calculating the Bank Holiday Charge in advance of each applicable Holiday. Potential methodologies for calculating the Bank Holiday Charge include, for example, time scaling of the VaR charge[6] or application of stress scenarios that cover potential market price risk exposure that may not be appropriately covered by scaling the VaR charge. NSCC would establish a methodology for calculating each Bank Holiday Charge that would take into consideration the market conditions prevailing at that time in order to permit NSCC to calculate a Bank Holiday Charge that appropriately estimates the risk that may be presented to NSCC on the applicable Holiday, when Members' Required Deposit cannot be collected. The Bank Holiday Charge would represent a percentage increase of the volatility charge on the business day prior to the Holiday, and such percentage increase applies uniformly to all Members. This means that if the Bank Holiday Charge is levied, the same methodology (*i.e.,* formula) is applied to all Members (that is, the Bank Holiday Charge is not a set dollar amount applied to all Members).

Members would be notified of the applicable methodology by an Important Notice issued no later than 10 business days prior to the application the Bank Holiday Charge, and the charge is collected on the business day prior to the applicable Holiday. The Bank Holiday Charge is removed from the Required Deposit on the business day following the Holiday.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are within the custody or control of the clearing agency.[7] Rule 17Ad–22(b)(1) under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions, so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.[8] Rule 17Ad–22(b)(2) under the Act requires a clearing agency to maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions.[9]

By incorporating the Backtesting Charge and the Bank Holiday Charge into the NSCC Rules, the proposed change addresses exposure that could subject NSCC to potential losses under normal market conditions in the event that a Member defaults. Specifically, the proposed rule change seeks to remedy potential situations that are described above where NSCC could be undermargined by requiring additional margin. Therefore, NSCC believes the proposed rule change enhances the safeguarding of securities and funds that are in the custody or control of NSCC, consistent with section 17(b)(3)(F) of the Act.

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[6] Market price risk and volatility increase with time as there is a greater potential for loss. This additional risk exposure is often approximated by time scaling of volatility by multiplying square root of the additional period of risk (e.g., if the VaR charge is calibrated to a 3-day risk horizon, an additional day of exposure could be approximated by $\sqrt{4/3}$ * VaR charge).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(b)(1).

[9] 17 CFR 240.17Ad–22(b)(2).

NSCC's Backtesting Charge is calculated and imposed to cover credit exposures estimated by NSCC based on historical backtesting deficiencies with the goal of maintaining each Member's Required Deposit above the 99 percent coverage threshold. This management of NSCC's credit exposures to Members is consistent with Rule 17Ad–22(b)(1) under the Act. Further, the charge is part of the Members' Required Deposits designed to maintain the coverage of credit exposures at a confidence level of at least 99 percent, which limits NSCC's exposures to Members under normal market conditions. It therefore is also consistent with Rule 17Ad–22(b)(2) under the Act. The proposed Backtesting Charge seeks to address backtesting deficiencies that could potentially leave NSCC undermargined by using the risk-based methodology described above to limit its credit exposure to Members.

NSCC's Bank Holiday Charge is calculated and imposed to cover credit exposures that results from market price moves that occur on a Holiday and are not incorporated in each Member's Required Deposit. This management of NSCC's credit exposures to Members is consistent with Rules 17Ad–22(b)(1) and 17Ad–22(b)(2) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that either the Backtesting Charge or the Bank Holiday Charge impose any burden on competition that is not necessary or appropriate.[10] These charges are necessary for NSCC to limit its exposure to potential losses from defaults by Members.

The Backtesting Charge is imposed on each Member on an individualized basis in an amount reasonably calculated to maintain its Required Deposit above NSCC's 99 percent coverage threshold. NSCC employs reasonable methods to calculate and impose an individualized charge in an amount designed to maintain each impacted Member's future backtesting coverage above the 99 percent coverage threshold, including a reasonable buffer.

Because the market price movements that occur on Holidays are related to the behavior of the market as a whole, the impact of such price movements on NSCC's risk is considered general market price risk. Therefore, the Bank Holiday Charge is imposed on all Members on a uniform basis in an amount reasonably calculated to mitigate the market price changes that could occur on a Holiday when banks are closed and NSCC is unable to collect Clearing Fund. The Bank Holiday Charge would represent a percentage increase of the volatility charge on the business day prior to the Holiday, and such percentage increase applies uniformly to all Members. This means that if the Bank Holiday Charge is levied, the same methodology (*i.e.,* formula) is applied to all Members (that is, the Bank Holiday Charge is not a set dollar amount applied to all Members).

NSCC believes any burden on competition imposed by the addition of these two charges to the NSCC Rules would be necessary and appropriate to limit NSCC's exposures to the risks being mitigated by such charges.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received any written comments relating to this proposal. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2016–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2016–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2016–004 and should be submitted on or before October 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22157 Filed 9–14–16; 8:45 am]

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[10] 15 U.S.C. 78q–1(b)(3)(I).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78802; File No. SR–NYSE–2016–62]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rule 67 Relating to the Tick Size Pilot Program

September 9, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 25, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 67 to (1) describe system functionality requirements necessary to implement the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS[4] under the Act ("Plan"), and (2) clarify the operation of certain exceptions to the Trade-at Prohibition[5] on Pilot Securities in the third test group. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 67 to (1) describe system functionality requirements necessary to implement the Plan[6] and (2) clarify the operation of certain exceptions to the Trade-at Prohibition[7] on Pilot Securities in the third test group ("Test Group Three").[8]

The Plan is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies and is currently scheduled to begin on October 3, 2016. Rule 67, adopted earlier this year to implement the quoting and trading requirements of the Plan, will be in effect on a two-year pilot period that coincides with pilot period for the Plan.

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. (f/k/a EDGA Exchange, Inc.), Bats EDGX Exchange, Inc. (f/k/a EDGX Exchange, Inc.), the Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, NYSE MKT LLC, NYSE Arca, Inc., and the Exchange (collectively "Participants"), filed the Plan with the Commission, pursuant to Section 11A of the Act[9] and Rule 608 of Regulation NMS thereunder.[10] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[11] The Plan was published for comment in the **Federal Register** on November 7, 2014,[12] and approved by the Commission, as modified, on May 6, 2015.[13]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Tick Size Pilot Program will enable the Commission to assess whether wider tick sizes would enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Tick Size Pilot Program will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Tick Pilot Program will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[14]

During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[15] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[16] Pilot Securities in Test Group Three will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid or "Best Protected Offer," unless an enumerated exception applies.[17] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS ("Rule 611")[18] will apply to the Trade-at requirement.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.608.

[5] Rule 67(e)(4)(A) defines the "Trade-at Prohibition" to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours. Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[6] *See* Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4–657) ("Tick Plan Approval Order"). *See,* also, Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4–657), 80 FR 70284 (File No. 4–657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016. The Plan was submitted to the Commission pursuant to Rule 608 of Regulation NMS. 17 CFR 242.608.

[7] *See* note 5, *supra.*

[8] *See infra* notes 14–17 and accompanying text for a description of Test Group Three.

[9] 15 U.S.C. 78k–1.

[10] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[11] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[12] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[13] *See* Tick Plan Approval Order, *supra* note 6. *See also* Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), amending the Plan to add National Stock Exchange, Inc. as a Participant.

[14] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[15] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[16] *See* Section VI(C) of the Plan.

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraphs (a) and (c)–(e) of Rule 67 to require member organizations to comply with the quoting and trading provisions of the Plan.[19] The Exchange also adopted paragraph (b) of Rule 67 to require member organizations to comply with the data collection provisions under Appendix B and C of the Plan.[20]

Trade-at Intermarket Sweep Orders

The Plan defines a Trade-at Intermarket Sweep Order ("ISO") as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs.[21]

The Exchange clarified the use of an ISO in connection with the "Trade-at" requirement in Test Group Three by adopting a comprehensive definition of "Trade-at ISO" under Rule 67(a)(1)(D).[22] The Exchange now proposes to further clarify that, when a Trade-at ISO is routed to a Trading Center, when simultaneously routing additional limit orders to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, such additional limit orders can be routed as either Trade-at ISOs or ISOs. Therefore, the Exchange is proposing to distinguish Trade-at ISOs from ISOs by adding the phrase "or Intermarket Sweep Orders" to the end of Rule 67(a)(1)(D)(ii), so that any such additional routed orders sent to execute against the Trade-at ISO limit order would need to be marked as either Trade-at ISOs or ISOs.

Likewise, the Exchange is proposing to amend Rule 67(e)(4)(C)(x) to add the phrase "or Intermarket Sweep Orders" into the Trade-at ISO exemption to the Trade-at Prohibition, to clarify that a Trading Center can simultaneously route Trade-at ISOs or ISOs to execute against the full displayed size of the Protected Quotation that was traded at.

Block Size Exemption to Trade-at Prohibition

The Plan defines Block Size as an order (1) of at least 5,000 shares, or (2) for a quantity of stock having a market value of at least $100,000. The Block Size exception to the Trade-at Prohibition permits a Trading Center to immediately execute a Block size order against displayed and undisplayed liquidity at a price equal to the National Best Bid or National Best Offer, as applicable, without satisfying all Protected Quotations at the National Best Bid or National Best Offer, as applicable.[23]

The Exchange proposes to amend Rule 67(e)(4)(C)(iii) to clarify how the Block Size exception to the Trade-at Prohibition would operate under the requirements of the Plan. The Exchange proposes to delete subparagraph (C) of Rule 67(e)(4)(C)(iii), which state that, to qualify for the Block Size exception, an order may not be executed on multiple Trading Centers. By deleting this requirement, the Block Size exception to the Trade At Prohibition would apply to an order received by a market that has sufficient liquidity to execute such Block Size, irrespective of whether the receiving market routes a portion of the Block Size order to another Trading Center to comply with Rule 611 or Regulation NMS. Any routed interest that returns unexecuted may be immediately executed under the same Block Size exception, provided such interest remains marketable.

Proposed Amendments to Rule 67 for Tick-Pilot Specific System Changes

The Exchange proposes to add paragraph (f) of Rule 67 to describe changes to system functionality necessary to implement the Plan. Paragraph (f) of Rule 67 would set forth the Exchange's specific procedures for handling, executing, re-pricing and displaying certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two, and Three.

In determining the scope of these proposed changes to implement the Plan, the Exchange reviewed its order types and identified which orders and instructions would be inconsistent with the Plan and propose to modify the operation of such order types so they will comply with the Plan, or, to the extent inconsistent with the Plan, eliminate them. These proposed changes are designed to comply with the Plan and to allow the Exchange to meet its regulatory obligations under the Plan.

As part of this review, the Exchange identified order types that were designed to comply with the requirements of Regulation NMS. Among other things, Regulation NMS requires a trading center to have policies and procedures to reasonably avoid displaying quotations that lock or cross any protected quotation[24] and to prevent trade-throughs in NMS stocks that do not fall within an exception enumerated in Rule 611(b) to Regulation NMS.[25] As such, under Regulation NMS, an exchange may rank undisplayed orders at the price of a protected quotation on an away market and execute such non-displayed orders at the price of a protected quotation on an away market. By contrast, in Test Group Three, an undisplayed order may not trade at the price of a protected quotation on an away market. Accordingly, as described below, in order to comply with the Plan for Test Group Three securities, the Exchange is proposing to modify the behavior of specified orders that are currently permitted to trade undisplayed at the price of the PBBO or NBBO.

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[17] *See* Section VI(D) of the Plan.

[18] 17 CFR 242.611.

[19] *See,* Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015) (SR–NYSE–2015–46) ("Quoting & Trading Rules Proposal"), as amended by Partial Amendment No. 1 to the Quoting & Trading Rules Proposal.

[20] *See* Securities Exchange Act Release No. 77468 (March 29, 2016), 81 FR 19269 (April 4, 2016) (SR–NYSE–2016–27).

[21] *See* Plan, Section I(MM).

[22] Rule 67(a)(1)(D) defines Trade-at ISO to mean a limit order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

[23] *See* Plan, Section VI(D).

[24] *See* 17 CFR 242.610(d).

[25] *See* 17 CFR 242.611(b).

As described in greater detail below, the Exchange is also proposing to reject specified orders in Pilot Securities in Test Group Three because the operation of such order types are, by their terms, inconsistent with the requirements of the Trade At Prohibition.

Proposed Rule 67(f)(1)—Trade-at Intermarket Sweep Orders

Proposed Rule 67(f)(1) would describe the handling of Trade-at Intermarket Sweep Orders ("TA ISO") on the Exchange. As described above, the requirements for a member organization that enters a TA ISO are specified in Rule 67(a)(1)(D)(ii) and differ from the requirements for a member organization that enters an IOC ISO (as specified in Rule 13(e)(3)(A)). However, the Exchange will handle a TA ISO the same way it handles an IOC ISO in all securities.

As proposed in Rule 67(f)(1)(A), the Exchange would accept TA ISOs in all securities. Further, TA ISOs must be designated as IOC, may include a minimum trade size, and do not route. These requirements are based on existing IOC functionality, as specified in Rule 13(b)(2) governing IOC Modifiers.

In addition, proposed Rule 67(f)(1)(B) would provide that the Exchange would immediately and automatically execute a TA ISO against the displayed and non-displayed bid (offer) up to its full size in accordance with and to the extent provided by Exchange Rules 1000–1004 and will then sweep the Exchange's book as provided in Rule 1000(d)(iii). Any portion of the TA ISO that is not executed would be immediately and automatically cancelled. This proposed rule text is based on current Rule 13(e)(3)(B).

As with Limit Orders designated IOC, proposed Rule 67(f)(1)(C) would provide that TA ISOs would be accepted before the Exchange opens and would be eligible to participate in the opening transaction at its limit price, but would not be accepted during a trading halt or pause for participation in a reopening transaction. This proposed rule text is based on current Rule 13(b)(2)(D) governing IOC Order participation in the opening transaction.

As noted, TA ISOs would not be accepted during a trading halt or pause of participation in a reopening transaction, which represents a change from the way the Exchange currently handles NYSE IOC Orders, which are also Limit Orders designated IOC.[26] Currently, NYSE IOC Orders received during a trading halt are held for participation in the reopening trade and, if not executed as part of the reopening trade, are fully or partially cancelled.[27]

Finally, proposed Rule 67(f)(1)(D) would provide that TA ISOs may not be entered as e-Quotes, d-Quotes, or g-Quotes. This proposed rule text is based on current Rule 70(a)(i), which provides that Floor broker agency interest files (*i.e.,* e-Quotes, d-Quotes, and g-Quotes) do not include ISOs.

Proposed Rule 67(f)(2)—Pilot Securities in Test Groups One, Two, and Three

Proposed Rule 67(f)(2) would describe the procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two and Three.

- Proposed Rule 67(f)(2)(A) would provide that references in Exchange rules to the minimum price variation ("MPV"), as defined in Supplementary Material .10 to Rule 62, would instead mean the quoting minimum price variation specified in paragraphs (c), (d), and (e) of this Rule. This proposed rule text promotes transparency in Exchange rules to be clear that if a rule specifies that an order will be priced based off of the MPV, for Pilot Securities in Test Groups One, Two, and Three, the applicable MPV will be the quoting MPV required by the Plan.[28] For example, Rule 13(e)(1)(B) provides that if a Limit Order designated with an Add Liquidity Only ("ALO") modifier is marketable against Exchange interest or would lock or cross a protected quotation in violation of Rule 610(d) of Regulation NMS, the order will be re-priced and displayed one MPV, as defined in Supplementary Material .10 to Rule 62, below the best-priced sell interest (for bids) or above the best-priced buy interest (for offers). As provided for in proposed Rule 67(f)(2)(A), on arrival, the MPV applicable for Limit Orders designated ALO in Test Groups One, Two, and Three would be $0.05.
- Consistent with the Plan, proposed Rule 67(f)(2)(B) would provide that pre-opening indications, as defined in Rule 15(a),[29] would be published in $0.05 pricing increments for Pilot Securities in Test Groups One, Two, and Three.
- Proposed Rule 67(f)(2)(C) would provide that Mid-Point Passive Liquidity ("MPL") Orders, which are undisplayed limit orders that automatically execute at the mid-point of the protected best bid ("PBB") and the protected best offer ("PBO"),[30] must be entered with a limit price in a $0.05 pricing increment consistent with the Plan. While MPL Orders in all Test Groups would be eligible to trade at the midpoint of the PBBO, which may not be in a $0.05 pricing increment, the Exchange proposes that the limit price specified for such orders must be in the quoting MPV for Test Groups One, Two, and Three.
- Proposed Rule 67(f)(2)(D) would clarify that trading collars that are not in the trading MPV for the security would be moved to the nearest price in the trading MPV for that security. Trading collars applicable to incoming Market Orders and marketable Limit Orders are specified in Rule 1000(c). As specified in that rule, Trade Collars are calculated as a specified percentage above the NBO (for buy orders) or below the NBB (for sell orders). As described in greater detail below, if the application of the percentage against the NBBO results in a price that is not in the applicable MPV, the Exchange will round the result down to the nearest MPV. For Pilot Securities in Test Groups One and Two, because the trading MPV is $0.01, the Exchange will use the $0.01 MPV when rounding down the Trading Collar. For Pilot Securities in Test Group Three, the Exchange will use the $0.05 MPV when rounding down the Trading Collar.

Proposed Rule 67(f)(3)—Pilot Securities in Test Groups Two and Three

Proposed Rule 67(f)(3) would specify procedures for handling, executing, and re-pricing of Retail Price Improvement Orders ("RPI") applicable to Pilot Securities in Test Groups Two and Three. An RPI is a non-displayed order that is priced better than the best protected bid or offer ("PBBO") utilized by Retail Liquidity Providers ("RLPs") and non-RLP member organizations to provide potential price improvement to retail investor orders.[31] Consistent with

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[26] NYSE IOC Orders automatically execute against the displayed quotation up to its full size and sweep the Exchange book, as provided in Rule 1000 to the extent possible, with portions of the order routed to other markets if necessary. *See* Rule 13(b)(2)(B).

[27] *See* Rule 13(b)(2)(E).

[28] *See, e.g.,* Rules 13(a)(1)(A)(iv), 13(e)(1)(B), and 13(e)(3)(C)(ii).

[29] Rule 15(a) provides that pre-opening indications will include the security and the price range within which the opening price is anticipated to occur and will be published via the securities information processor and proprietary data feeds.

[30] *See* Rule 13(d)(1)(A).

[31] *See* Rule 107C. In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis. *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) ("RLP Approval Order") (SR–NYSE–2011–55). *See*

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the requirements of the Plan, which requires a minimum of $0.005 price improvement in retail programs in Test Groups Two and Three instead of the $0.001 price improvement specified in Rule 107C, proposed Rule 67(f)(3) would provide that RPIs must be entered with a limit price and an offset in a $0.005 increment.

Proposed Rule 67(f)(4)—Pilot Securities in Test Group Three

Proposed Rule 67(f)(4) would specify procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Group Three. The proposed changes to order behavior for Pilot Securities in Test Group Three are designed to comply with the Trade-at prohibition by changing the ranking of orders that trade at non-displayed prices unless the execution is eligible for an exception.

- Under Rule 72(c)(i), an automatically executing order will trade first with any unexecuted Market Orders, allocated on time priority, and then with displayable bids (offers). If there is insufficient displayable volume to fill the order, an automatically executing order will trade next with non-displayable interest on parity. The Exchange proposes to modify these requirements for Pilot Securities in Test Group Three. Under proposed Rule 67(f)(4)(A), an incoming automatically executing order to sell (buy) will trade with displayable bids (offers) and route to protected bids (offers) before trading with an unexecuted Market Order held undisplayed at the same price. Further, proposed Rule 67(f)(4)(A) would provide that, after trading or routing, or both, any remaining balance of such an incoming automatically executing order would satisfy any unexecuted Market Orders in time priority before trading with non-displayable interest on parity. As such, proposed Rule 67(f)(4)(A) would specify the ranking of orders for Pilot Securities in Test Group Three and is designed to assure that non-displayed orders, including unexecuted Market Orders, will not price match protected quotations. Instead, the Exchange will either route or cancel an incoming order, consistent with the order's instructions, before trading with either unexecuted Market Orders or non-displayed orders.[32]
- Proposed Rule 67(f)(4)(B) would set forth the trading restrictions applicable to ISOs in Test Group Three.
  - Proposed Rule 67(f)(4)(B)(i) would provide that, on entry, Day ISOs would be eligible for the Trade-at ISO exception set forth in proposed Rule 67(e)(4)(C)(x). Because a member organization that enters a Day ISO to buy (sell) must simultaneously route one or more limit orders to execute against the full displayed size of any protected offer (bid), a member organization entering a Day ISO would have met the obligations specified in Rule 67(e)(4)(C)(x). Accordingly, proposed Rule 67(f)(4)(B)(i) would provide that on entry, Day ISOs would be eligible for the exception set forth in Rule 67(e)(4)(C)(x).
  - Proposed Rule 67(f)(4)(B)(ii) would provide that an IOC ISO to buy (sell) would not trade with non-displayed interest to sell (buy) that is the same price as a protected offer (bid) unless the limit price of such IOC ISO is higher (lower) than the price of the protected offer (bid). As such, an arriving IOC ISO would be permitted to trade with undisplayed orders resting on the NYSE order book only if the limit price of the arriving IOC ISO order is better than the PBBO. This would be permitted under the Trade-at Prohibition because to enter an IOC ISO to buy (sell) at a price higher (lower) than PBO (PBB), the entering firm would have been required to simultaneously route limit orders to execute against the full size of the PBO (PBB).
- Proposed Rule 67(f)(4)(C) would set forth the restrictions applicable to resting non-displayed interest, *i.e.,* a resting order to buy (sell) that is not displayed at the price at which it is eligible to trade. Resting non-displayed interest on the Exchange could include Non-Display Reserve Orders,[33] Non-Display Reserve e-Quotes,[34] the reserve interest of Minimum Display Reserve Orders and Minimum Display Reserve e-Quotes,[35] and pegging interest that is not displayed.[36] The proposed rule changes are designed to assure that these orders would not price match a protected quotation.
  - Proposed Rule 67(f)(4)(C)(i) would provide that resting non-displayed interest to buy (sell) would not trade at the price of a protected offer (bid).
  - Proposed Rule 67(f)(4)(C)(ii) would provide that resting non-displayed interest to buy (sell) would not trade at the price of a protected bid (offer) unless the incoming order to sell (buy) is a TA ISO, Day ISO, or IOC ISO that has a limit price lower (higher) than the price of the non-displayed interest. In such case, the arriving TA ISO, Day ISO, or IOC ISO would be eligible to trade with resting contra-side non-displayed interest that is priced equal to a same-side protected quote because the entering firm would have met its obligation to simultaneously route additional limit orders to trade with such protected quotation. Proposed Rule 67(f)(4)(C)(iii) would provide that, in order to avoid trading with an arriving order at the price of a protected quotation, resting non-displayed interest will either be routed, cancelled, or re-priced, consistent with the terms of the order.
- Proposed Rule 67(f)(4)(D) would provide that d-Quotes in Pilot Securities in Test Group Three would not exercise discretion as provided for in Rule 70.25 if (i) exercising such discretion would result in an execution at the price of a protected quotation, or (ii) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote. As defined in Rule 70.25, a d-Quote is an e-Quote, *i.e.,* a Floor broker agency interest file, that has discretionary instructions as to size or price, or both. The discretionary price or size at which a d-Quote may trade is not displayed. If the discretionary instructions of a d-Quote cannot be met, it will trade as a regular e-Quote at its filed price.[37] As provided for in Rule 70.25(e)(v)(A)(1), to determine whether to exercise discretion for d-Quotes on the Exchange's book, the Exchange will use the amount of discretion necessary to permit a trade on the Exchange consistent with Rule 611. Therefore, a d-Quote may exercise discretion to trade at the price of a protected quotation, but

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also Securities Exchange Act Release No. 78600 (August 17, 2016), 81 FR 57642 (August 23, 2016) (SR–NYSE–2016–54) (extending pilot to December 31, 2016). The Exchange established the Program to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. *See* RLP Approval Order, 77 FR at 40674.

[32] For example, a Do Not Ship (DNS) Order will cancel if compliance with Exchange rules or federal securities laws requires that all or part of such order be routed to another market center for execution. *See* Rule 13(e)(2).

[33] A "Non Displayed Reserve Order" is a Limit Order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. *See* Rule 13(d)(1)(A).

[34] *See* Rule 70(f)(ii).

[35] A "Minimum Display Reserve Order" is a Limit Order that will have a portion of the interest displayed when the order is or becomes the Exchange BBO and a portion of the interest ("reserve interest") that is not displayed. *See* Rules 13(d)(2)(C) and 70(f)(i).

[36] *See* Rule 13(f)(1)(A) (Pegging interest includes non-displayable interest to buy or sell at a price to track the same-side PBBO). d-Quotes enable Floor brokers to enter discretionary instructions as to the price at which the d-Quote may trade and the number of shares to which the discretionary price instructions apply. Executions of d-Quotes within a discretionary pricing instruction range are considered non-displayable interest for purposes of Rule 72. *See* Rule 70.25(a)(ii).

[37] *See* Rule 70.25(a)(iv).

not through the price of a protected quotation.

Because interest that is non-displayed cannot price match protected quotations under the Trade-at Prohibition, the Exchange proposes to amend the operation of d-Quotes in Pilot Securities in Test Group Three to prevent the possibility that exercising discretion, *i.e.,* a trade at a non-displayed price, would result in a trade at the price of a protected quotation. To effect this change, the Exchange proposes that the Exchange would not exercise discretion for a d-Quote if exercising discretion would result in an execution at the price of a protected quotation. In addition, the Exchange proposes that if the protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote, the Exchange would not exercise discretion for that d-Quote.[38] The Exchange believes that restricting d-Quote discretion in these circumstances would reduce the potential for non-displayed interest to execute at the price of a protected quotation, in violation of the Trade-at Prohibition.

- Proposed Rule 67(f)(4)(E) would provide that only buy and sell orders that are entered into the Cross Function pursuant to Supplementary Material .10 to Rule 76[39] would be eligible for the Block Size exception to the Trade-at Prohibition set forth in Rule 67(e)(4)(C)(iii), as amended. Rule 67(e)(4)(C)(iii), described in more detail above, sets forth the Block Size exception to the Trade-at Prohibition. The Exchange believes that orders that meet the Block Size definition and that are entered pursuant to Rule 76.10 would meet this exception because the Cross Function identifies when eligible orders can be executed at a price.[40]
- Proposed Rule 67(f)(4)(G) would specify behavior of certain Self-Trade Prevention ("STP) Modifiers in Test Group Three and would provide that incoming orders designated with an STPN Modifier would cancel before routing or trading with non-displayed orders if the opposite-side resting interest marked with an STP modifier with the same market participant identifier ("MPID") is a displayed order. Rule 13(f)(3) describes the Exchange's STP Modifiers. As provided for in Rule 13(f)(3)(A), an incoming order designated with an STP modifier will be prevented from executing against a resting opposite-side order also designated with an STP modifier with the same MPID. Such incoming order will execute against all available opposite-side interest, displayed and non-displayed, and will be evaluated for cancellation only to the extent it would execute against opposite-side interest with an STP modifier with the same MPID. Rule 13(f)(3)(C)(i) further describes the STP Cancel Newest ("STPN") modifier, pursuant to which, after executing with all other opposite-side interest that does not have an STP modifier with the same MPID, the remaining balance of the incoming order would cancel. For Pilot Securities in Test Group Three, because an incoming order cannot trade with non-displayed interest before routing to protected quotations, orders with an STP modifier will first be evaluated against displayed orders, then routed to protected quotations, if applicable. Only then would an incoming order with an STP modifier be evaluated against resting non-displayed orders with an STP modifier from the same MPID. However, for Pilot Securities in Test Group Three with an STPN modifier, the Exchange proposes that if there are opposite-side displayed orders with an STP modifier from the same MPID, consistent with the STPN instruction, such incoming order with an STPN modifier would cancel in order to prevent an execution of that order against the resting displayed order with the matching STP modifier. As such, an order with an STPN modifier will not route or trade with resting non-displayed orders that do not include an STP modifier from the same MPID if there is a resting displayed order with an STP modifier from the same MPID.
- Finally, proposed Rule 67(f)(4)(G) would provide that g-Quotes and Buy Minus/Zero Plus Orders, as defined in Rule 13, would be rejected.
  - ○ A g-Quote is an electronic method for Floor brokers to represent orders that yield priority, parity and precedence based on size to displayed and non-displayed orders on the Exchange's book, in compliance with Section 11(a)(1)(G) of the Act.[41] Under the Trade-at Prohibition, however, because incoming orders would route to protected quotations before trading with non-displayed interest, a resting g-Quote would be required to yield not only to non-displayed orders on the Exchange's book, but also protected quotations, even if the g-Quote were displayed. Because the Exchange believes that yielding to away protected quotations does not further the goals of Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[42] the Exchange has determined to reject G-quotes in Pilot Securities in Test Group Three. The Exchange notes that making g-Quotes unavailable in Test Group Three would not disadvantage member organizations from effecting transactions for their own account, the account of an associated person, or any other account of which it or an associated person exercises discretion at the Exchange. Such orders could be routed to an unaffiliated Floor broker for entry on the Exchange or entered electronically into Exchange systems from an off-Floor location.
  - ○ An order with a "Buy Minus Zero Plus" instruction will not trade at a price that is higher than the last sale, subject to its limit price, if applicable.[43] As such, Buy Minus/Zero Plus Orders assist member organizations with compliance with the "safe harbor" provisions of Rule 10b–18 under the Act ("Rule 10b–18") for issuer repurchases.[44] Under regular processing, an incoming order that trades with both displayed and non-displayed resting orders is reported as a single transaction to the Consolidated Tape. Under Rule 1004, that bundled reported transaction would be used to determine whether to elect a Buy Minus/Zero Plus Order. However, for Pilot Securities in Test Group Three, because the Exchange would trade an incoming order first with displayed orders and then route to protected quotations before trading with non-displayed orders, any executions against displayed orders and non-displayed orders at the same price would be

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[38] For example, assume the Exchange has a resting d-Quote to buy with $0.10 of price discretion that is filed at $10.05 and there is a protected bid of $10.05 and a protected offer of $10.20. Assume that the Exchange receives a sell order priced at $10.10. Under Rule 70.25, the resting d-Quote to buy could exercise price discretion to trade with that incoming order. However, under proposed Rule 67(f)(4)(D), for Pilot Securities in Test Group Three, that resting d-Quote order to buy would not exercise price discretion because it would result in a trade based on a non-displayed price that would be ahead of the same-side protected bid.

[39] Supplementary Material .10 to Rule 76 provides for a "Cross Function" that Floor brokers may use to monitor compliance with Rule 611 of Regulation NMS. To be eligible for this Cross Function, the proposed cross transaction must be for at least 10,000 shares or a quantity of stock having a market value of $200,000 or more.

[40] *See* Rule 76.10(a).

[41] Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. Subsection (G) of Section 11(a)(1) and provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction, also known as a "G order" provided such order yields priority, parity, and precedence.

[42] See 15 U.S.C. 78k(a)(1); 17 CFR 240.11a2–2(T).

[43] The Exchange recently filed to amend Rule 13 to eliminate orders with a sell "plus" and buy "minus" instruction and retain the "Buy Minus Zero Plus" instruction. *See* SR–NYSE–2016–59.

[44] *See* 17 CFR 240.10b–18.

reported as separate transactions to the Consolidated Tape. As such, under Rule 1004, that first print of the displayed orders could elect a Buy Minus/Zero Plus Order. The Exchange does not believe that this processing would be consistent with how Buy Minus/Zero Plus Orders function on the Exchange as it would result in the elected Buy Minus/Zero Plus Order, which would trade as a Market Order, interrupting the allocation process of that incoming order. To prevent this result, the Exchange proposes not to make this order type available for Pilot Securities in Test Group Three. As proposed, Buy Minus/Zero Plus Orders would therefore be rejected if entered in Pilot Securities in Test Group Three.

Proposed Amendments to Other Exchange Rules

The Exchange also proposes to amend Rule 80C governing the Limit Up/Limit Down ("LULD") price controls pursuant to the NMS Plan to Address Extraordinary Market Volatility ("LULD Plan")[45] and Rule 1000(c) governing Trading Collars in order to facilitate compliance with the Plan. These proposed rule changes are designed to facilitate compliance with the Plan and would be applicable across all securities that trade at the Exchange, regardless of the applicable MPV.

In particular, the Exchange proposes to add a new subsection (8) to Rule 80C(a) that would specify that, after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the SIP under the LULD Plan, the Exchange would calculate Price Bands based on the first Reference Price provided to the SIP and, if such Price Bands are not in the MPV for the security, round such Price Bands to the nearest price at the applicable MPV. The Exchange would apply this standard rounding calculation regardless of the MPV of the security.

The Exchange also proposes to amend Rule 1000(c)(i), which describes the calculation of Trading Collars, to specify that Trading Collars for both buy and sell orders that are not in the MPV for the security, as defined in Supplemental Material .10 to Rule 62, would be rounded down to the nearest price at the applicable MPV.

Proposed Non-Substantive Amendments to Rule 67

Finally, the Exchange proposes to make non-substantive, technical amendments to Rule 67. First, the Exchange proposes to amend Rule 67(a)(1)(D)(ii) to add the word "displayed" between the words "full" and "size" so that the full clause would provide "are routed to execute against the full displayed size of any protected bid." This proposed amendment makes the rule text parallel with the existing rule text that provides "or the full displayed size of any protected offer." Second, the Exchange proposes to amend Rule 67(e)(4)(C)(xv) to correct a typographical error and change the word "bond" to "bona" when using the phrase "bona fide error."

Implementation Date

If the Commission approves the proposed rule changes, the proposed rule changes will be effective upon Commission approval and shall become operative upon commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[46] in general, and furthers the objectives of Section 6(b)(5) of the Act[47] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The proposed rule change is designed to comply with the Plan, reduce complexity and enhance system resiliency while not adversely affecting the data collected under the Plan. The Exchange believes that the proposed rule changes are thus reasonably designed to comply with applicable quoting and trading requirements specified in the Plan and, as discussed further below, other applicable regulations.

The Exchange believes that the proposed changes to order behavior for Pilot Securities in Test Group Three would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed, and necessary, to modify order behavior to comply with the Trade-at Prohibition by eliminating the ability for orders that can trade at a non-displayed price to price match protected quotations. As the Commission noted in the Tick Plan Approval Order, the Plan is reasonably designed to provide measurable data that should facilitate the ability of the Commission, the public, and market participants to review and analyze the effect of tick size on the trading, liquidity, and market quality of securities of smaller capitalization companies.[48] The Plan thus provides for a mechanism to provide a data-driven approach to evaluate whether certain changes to market structure for Pilot Securities would be consistent with the Commission's mission to protect investors, maintain fair and orderly and efficient markets, and facilitate capital formation.[49] By having three test groups, the data that will be collected will demonstrate how behavior will change based on the differing requirements of the test groups. Because there are different requirements for the three Test Groups, a logical consequence is that order behavior will change depending on the requirements of each Test Group, which is the purpose of having a pilot with three test groups.

With respect to Pilot Securities in Test Group Three, the Commission recognized the particular complexity of implementing and complying with the Trade-at Prohibition, including that trading centers would need to "monitor protected quotations on other trading centers and prevent an execution that would match the price of any such quotation unless the trading center itself was displaying a protected quotation" and that "compliance with the Trade-at Prohibition would require systems changes by trading centers."[50] Trading centers that are not registered exchanges will be able to implement compliance with the Trade-at Prohibition by modifying the behavior of order types that currently price match protected quotations and without public notice and without filing any rule changes with the Commission. Such modified behavior would be applicable, and indeed required, only for Pilot Securities in Test Group Three. Applying the modified order behavior for compliance with the Trade-at Prohibition to Pilot Securities in other Test Groups would moot the differences between the Test Groups, which would thwart the ability to assess any meaningful differences in order behavior for the three Test Groups.

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[45] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

[48] *See* Tick Plan Approval Order, *supra* note 6, at 27529.

[49] *Id.*

[50] *Id.* at 27530.

As a trading center, the Exchange must also modify behavior of order types to comply with the Trade-at Prohibition. However, as a registered exchange, the Exchange has rules that are filed with the Commission that describe in detail order behavior, including current order behavior that is designed in compliance with Rules 610(d) and 611 of Regulation NMS. These existing rules provide for non-displayed order types to price match protected quotations even if not displaying a quote at that price. Unlike a trading center that is not a registered exchange, the Exchange is required to file a proposed rule change to describe how it would modify order behavior in compliance with the Plan.[51] For the Exchange to implement compliance with the Plan, and specifically the requirements of the Trade-at Prohibition, the Exchange assessed its order type behavior and identified those changes that would be necessary to prevent an execution on a non-displayed order that would match the price of protected quotation unless that Away Market is displaying a protected quotation.

The Exchange believes that the proposed changes regarding ISOs, MPL Orders, RPI Orders, resting non-displayed interest, d-Quotes, buy and sell orders entered into the Cross Function, STPN modifiers, Buy Minus/Zero Plus Orders, and g-Quotes and how the Exchange allocates and routes incoming orders are consistent with the Act because they are intended to modify the Exchange's system to comply with the provisions of the Plan and the different requirements for the three Test Groups and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. For Pilot Securities in Test Group Three, the Exchange believes that the proposed modifications to order behavior are designed to prevent executions of orders with a non-displayed working price from price matching a protected quotation. These are precisely the type of order behavior changes contemplated by the Plan; complying with the Trade-at Prohibition by definition requires differing order behavior as compared to the other Test Groups or the control group. For example, the Exchange proposes that order types that are eligible to trade at non-displayed prices that would be equal to the PBBO would be re-priced, cancelled, or routed to assure that such orders would not price match a protected quotation in violation of the Trade-at Prohibition. Likewise, for d-Quotes, for Pilot Securities in Test Group Three only, the Exchange would not exercise discretion if it could result in a violation of the Trade-at Prohibition. The Exchange would not apply these order behavior changes to Pilot Securities in Test Groups One and Two because to do so would subvert the quality of data collected; Test Groups One and Two do not have the Trade-at Prohibition and therefore non-displayed orders in those Test Groups may price match a protected quotation, provided such executions are in the applicable MPV for the security.

In addition, the Exchange proposes to reject g-Quotes and Buy Minus/Zero Plus Orders in Test Group Three only because application of the Trade-at Prohibition to these order types would impair the function of those order types. For g-Quotes, in order to meet the requirement to yield to all orders on the Exchange's book, including non-displayed orders, to comply with the Trade-at Prohibition, g-Quotes would also have to yield to protected quotations, even if the g-Quote were displayed. The Exchange believes that this processing would be inconsistent with the purpose of g-Quotes. The Exchange notes that making g-Quotes unavailable in Test Group Three would not disadvantage member organizations from effecting transactions for their own account, the account of an associated person, or any other account of which it or an associated person exercises discretion at the Exchange. Such orders could be routed to an unaffiliated Floor broker for entry on the Exchange or entered electronically into Exchange systems from an off-Floor location. For Buy Minus/Zero Plus Orders, such orders are currently elected based on a bundled transaction that is reported to the Tape that includes executions of both displayed and non-displayed orders. Under the Trade-at Prohibition, because executions against displayed interest would be reported to the Consolidated Tape separately from executions against non-displayed interest, under Rule 1004, a Buy Minus/Zero Plus Order would be elected and converted to a Market Order in the middle of processing an incoming order. The Exchange believes that this would undermine the purpose of a Buy Minus/Zero Plus Order and would introduce unnecessary complexity into the processing of orders. The Exchange notes that no other exchange offers an instruction similar to the Buy Minus/Zero Plus Order. Because these proposed rule changes are intended to comply with the Plan, the Exchange believes that these proposals are in furtherance of the objectives of the Plan, as identified by the Commission, and are therefore consistent with the Act.

The Exchange further believes that rejecting g-Quotes and Buy Minus/Zero Plus Orders and modifying the behavior of incoming orders with an STPN modifier for Pilot Securities in Test Group Three is consistent with the Act because the proposed changes are designed to eliminate unnecessary trading system complexity and risk. Regulation SCI required the Exchange to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act. The proposed change is intended to reduce trading system complexity and risk to ensure the Exchange's technology remains robust and resilient.[52] Specifically, as noted above, to comply with the Trade-at Prohibition, both g-Quotes and Buy Minus/Zero Plus Orders would not function in the same manner as currently provided for, and the Exchange believes that applying the Trade-at Prohibition to these order types would introduce unnecessary complexity and risk that would not further the objectives of how these order types are intended to function.

Lastly, the Exchange believes that the proposed amendments to Rules 80C and 1000(c) would remove impediments to and perfect the mechanism of a free and open market and a national market system as they provide transparency regarding (1) how the Exchange would calculate and round Price Bands under the LULD Plan after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the SIP, and (2) that Trading Collars for both buy and sell orders that are not in the MPV for the security would be rounded down to the nearest price at the applicable MPV. The Exchange proposes to implement these changes for all securities, not only Pilot

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[51] Section 19(b)(1) of the Act requires that each self-regulatory organization shall file with the Commission, in accordance with Rule 19b–4 thereunder, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization. 15 U.S.C. 78s(b)(1).

[52] The Commission has expressed concern regarding potential market instability caused by technological risks. *See* Chair Mary Jo White, Commission, "Enhancing Our Equity Market Structure" (June 5, 2014), available at *https://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610 w6Y.*

Securities under the Plan. As provided for in proposed Rule 67(f)(2)(A), any references to MPV in these rules would instead mean the quoting MPV specified in Rule 67(c), (d), and (e).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed is intended to assist the Exchange in meeting its regulatory obligations pursuant to the Plan, reduce system complexity, and enhance resiliency. The Plan requires all trading centers, including over-the-counter markets, to implement changes to comply with the requirements of the Plan and specifically the Trade-at Prohibition. The Exchange fully expects that, in order to comply with the Trade-at Prohibition, trading centers other than registered exchanges will modify the behavior of orders for Pilot Securities in Test Group Three that will not be applied to Pilot Securities in Test Groups One and Two. Unlike such trading centers, as a self-regulatory organization, under Section 19(b)(1) of the Act,[53] the Exchange is required to file proposed rule changes for any modifications to order behavior that it proposes for the Plan. The absence of Commission approval of these proposed rule changes would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because trading centers that are not registered exchanges would be able to implement changes to comply with the Plan, but the Exchange would not. The Exchange believes that a disapproval of the Exchange's proposed rules would therefore put the Exchange at a competitive disadvantage vis-à-vis the over-the-counter markets because such trading centers would be able to modify the behavior of non-displayed orders in Test Group Three without restriction. The Exchange further notes that the proposed rule change will apply equally to all member organizations that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange respectfully requests accelerated effectiveness of this proposed rule change pursuant to Section 19(b)(2) of the Act.[54] The Exchange believes that there is good cause for the Commission to accelerate effectiveness because the proposed rule changes are designed to specify procedures for the handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two, and Three. In determining the scope of these proposed changes to implement the Plan, the Exchange reviewed its order types and identified which orders and instructions would be inconsistent with the Plan and propose to modify the operation of such order types so they will comply with the Plan, or, to the extent inconsistent with the Plan, eliminate them. These proposed changes are consistent with the protection of investors and the public interest because they are designed to comply with the Plan and to allow the Exchange to meet its regulatory obligations under the Plan. Because the Plan will be implemented beginning on October 3, 2016, the Exchange believes there is good cause to accelerate effectiveness so that the Exchange may implement the proposed changes concurrent with the implementation date of the Plan.

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–62, and should be submitted on or before September 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22151 Filed 9–14–16; 8:45 am]

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[53] 15 U.S.C. 78s(b)(1).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78806; File No. SR–NASDAQ–2016–098]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change To Modify the Complimentary Services Offered to Certain New Listings

September 9, 2016.

I. Introduction

On July 11, 2016, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the complimentary services offered to certain new listings. The proposed rule change was published for comment in the **Federal Register** on July 28, 2016.[3] No comment letters were received in response to the Notice. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange offers complimentary services to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company ("Eligible New Listings") and to companies that switch their listing from the New York Stock Exchange ("NYSE") to the Nasdaq Global or Global Select Markets ("Eligible Switches" and, with Eligible New Listings, "Eligible Companies").[4] According to the Exchange, this program offers valuable services to newly listing companies designed to help ease the transition of becoming a public company or switching markets, makes listing on Nasdaq more attractive to these companies, and provides Nasdaq Corporate Solutions the opportunity to demonstrate the value of its services and forge a relationship with the company.[5] Currently, Eligible Companies receive a whistleblower hotline, investor relations Web site, press release distribution services, interactive webcasting, and market analytic tools, and may receive a market surveillance service.[6] As discussed in more detail below, the Exchange proposed to modify its current offerings to Eligible Companies.

The Exchange currently offers Eligible Companies that have a market capitalization of $750 million or more a stock surveillance tool, through which an analyst attempts to determine who is buying and selling the company's stock.[7] While any public company can use this offering, the Exchange stated in its proposal that it may not be an appropriate fit for some companies, such as those that are closely held or otherwise have low liquidity or low volume, which may prioritize different investor relations tools over stock surveillance.[8] Therefore, the Exchange proposed to allow companies eligible for this service to choose from the existing stock surveillance offering or other alternatives, which Nasdaq stated are also designed to help companies identify current owners, potential buyers or sellers of their stock, or otherwise enhance their investor relations efforts.[9] Specifically, Eligible Companies that have a market capitalization of $750 million or more would be allowed to choose the existing stock surveillance offering or from among the following alternatives: (i) A global targeting package, where an investor targeting specialist will help focus the company's investor relations efforts on appropriate investors, tailor messaging to those investors' interests and measure the company's impact on their holdings; (ii) monthly ownership analytics and event driven targeting, which provide a monthly shareholder analysis and tracking report, which an analyst will help interpret during a monthly call, and a shareholder targeting plan around one event each year, such as a roadshow or investor conference; or (iii) an annual perception study designed to identify how the company is perceived by key stakeholders and provide the company with actionable recommendations for enhancing its perception in the market.[10] The approximate retail value of the proposed new services ranges from $35,000 to $46,000 per year, as compared to the approximate retail value of $51,000 for the existing stock surveillance tool.[11]

The Exchange also proposed to create a new tier of services for Eligible Companies with a market capitalization of $5 billion or more. As noted in the Original Approval Order and the 2014 Approval Order, the Exchange believes that it is appropriate to offer different services based on a company's market capitalization given that larger companies generally will need more and different governance, communication, and intelligence services.[12] According to the Exchange, companies with a market capitalization of $5 billion or more can benefit from, and are more likely to purchase at the end of the complimentary period, investor targeting or perception studies in addition to surveillance services because they have more complex investor relations functions and frequently have more shareholders and a greater change in their shareholdings.[13] As such, the Exchange proposed to offer these companies, with a market capitalization of $5 billion or more, the choice of a second market advisory tool.

The Exchange also proposed to modify the complimentary services offered to Eligible Switches. In particular, the Exchange proposed to increase the number of users of the market analytic tool to three users for Eligible Switches with a market capitalization of $750 million or more but less than $5 billion and to four users for Eligible Switches with a market capitalization of $5 billion or more.[14] In addition, Nasdaq proposed to increase the term of the complimentary services from three years to four years for any Eligible Switch with a market capitalization of $750 million or greater.[15]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78392 (July 22, 2016), 81 FR 49705 ("Notice").

[4] *See* Notice, *supra* note 3, at 49705. *See also* Securities Exchange Act Release Nos. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR–NASDAQ–2011–122) ("Original Approval Order") and 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058) ("2014 Approval Order").

[5] *See* Notice, *supra* note 3, at 49705.

[6] *See* Nasdaq Rule IM–5900–7(b)–(c). Only Eligible Companies with a market capitalization of $750 million or more receive the market surveillance service. The Exchange proposed to rename this service as "stock surveillance" to better reflect its purpose.

[7] *See* Nasdaq Rule IM–5900–7(c).

[8] *See* Notice, *supra* note 3, at 49705.

[9] *See id.*

[10] *See* proposed Rule IM–5900–7(a) under section being renamed "Market Advisory Tools."

[11] *See* Notice, *supra* note 3, at 49705. The Exchange also proposed to update the description of the stock surveillance tool to clarify that it is a single, dedicated analyst who provides that service, as opposed to the team approach used for the proposed alternative market advisory tools, and to note that the analyst attempts to identify institutional buyers and sellers in the company's stock. *See id.*

[12] *See* Notice, *supra* note 3, at 49706. *See also* Original Approval Order, *supra* note 4, at 79265.

[13] *See* Notice, *supra* note 3, at 49706.

[14] *See* proposed Rule IM–5900–7(c)(2)–(3). This service has a retail value of approximately $29,000 per year for two users, $40,000 for three users, and $51,000 for four users. *See* Notice, *supra* note 3, at 49706.

[15] *See* proposed Rule IM–5900–7(c)(2)–(3). The Exchange noted that this proposal would restore some features and the term of complimentary

Continued

The Exchange also proposed to revise the values and descriptions of the complimentary services offered.[16] In addition, the Exchange proposed to amend the description of the market analytic tool to reflect the addition of mobile access to the users of that service and to add the value of that offering for three and four users ($40,000 and $51,000, respectively).[17] In its filing, the Exchange also proposed to rename the "Interactive Webcasting" service "Audio Webcasting" to reflect the voice-only nature of the service, which is delivered through a platform branded with the company's name and logo that allows real-time questions from the audience, and to describe the four audio webcasts as a "package" to reflect the basis for the approximate retail value provided.[18] In addition, the Exchange proposed to rename the current "Press Release" service to "Disclosure Services" to better reflect the availability of EDGAR and XBRL services, and to specify that these services are provided as an annual stipend usable with Nasdaq Corporate Solutions.[19] The Exchange also proposed to delete the reference to factors affecting the number of press releases available because the revised rule would explicitly state that an annual stipend is provided and would emphasize disclosure services generally rather than just press releases.[20]

The Exchange stated that if a company has a choice among different complimentary services under the proposed rule, the company must make its selection when it first begins to use a complimentary service and will not be permitted to subsequently change to a different complimentary service offered in the package.[21] The Exchange noted in its proposal that a company can discontinue using a service at any time without penalty and can also elect to purchase from Nasdaq Corporate Solutions a service alternative that was previously declined or a comparable service from another competitor.[22]

The Exchange noted that any company receiving services under the terms of the Original Approval Order or the 2014 Approval Order on the date this proposal is approved may elect to receive services under the revised terms in this proposal. If a company elects to receive services under this proposal, the services that the company is eligible to receive will be determined based on its status and market capitalization at the time of its original listing and the length of time that services are available to the company under the revised package will be calculated from the company's original listing date.[23]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[24] Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)[25] and 6(b)(5) of the Act[26] in particular, in that the proposed rule is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act[27] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to revise the products and services it offers to companies. According to Nasdaq, the stock surveillance tool that certain Eligible Companies receive may not be an appropriate fit for some of these companies, such as those that are closely held or otherwise have low liquidity or low volume.[28] Accordingly, these companies may derive more value from the other market advisory services, as described above, that Nasdaq is now going to be offering as a choice, in addition to the stock surveillance tool, to Eligible Companies with a market capitalization of $750 million or more.

The Commission also believes that it is consistent with the Act for the Exchange to create a new tier of services for Eligible Companies with a market capitalization of $5 billion or more and to offer varying services to different categories of issuers since larger capitalized companies generally will need and use more services.[29] The Exchange represents that companies with a market capitalization of $5 billion or more have more complex investor relations functions and therefore can benefit from additional market advisory services and are more likely to purchase additional services at the end of the complimentary period.[30] In addition, the Exchange's proposal would provide Eligible Switches additional user seats for the market analytic tool than those provided to similarly capitalized Eligible New Listings. In making this distinction, the Exchange has stated that Eligible Switches are more likely to benefit from additional market analytic user seats than Eligible New Listings because these companies generally have larger investor relations teams already in place, whereas Eligible New Listings receive support from investment banks and others for a period of time after listing as their investor relations programs mature and therefore have, in the Exchange's view, less need for additional user seats.[31] Moreover, Nasdaq stated in its proposal that Eligible Switches will, in its view, forego more services paid for by their former exchange and that larger Eligible Switches will forego even more services. In support of this, Nasdaq notes that NYSE recently modified its services offered to listed companies so that they are now valued higher so that some companies will need a greater incentive

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services that was previously in effect for such companies. *See* Notice, *supra* note 3, at 49706.

[16] In particular, the approximate retail value would be updated from $15,000 to $16,000 for the investor relations Web site, from $30,000 to $29,000 for the market analytic tool for two users, and from $50,000 to $51,000 for the stock surveillance tool. *See* proposed Rule IM–5900–7(a). The Exchange also proposed to eliminate rounding in the total retail value of the services offered to each category of Eligible Company. *See* Notice, *supra* note 3, at 49706. In addition, the Exchange proposed to modify the introductory note to Rule IM–5900–7 to reference the historical changes to the program and explain the impact of the revisions to companies that are already listed, and to reorganize the rule to enhance its readability and usability. *See id.*

[17] *See* proposed Rule IM–5900–7(a).

[18] *See* Notice, *supra* note 3, at 49706.

[19] *See* proposed Rule IM–5900–7(a).

[20] *See* Notice, *supra* note 3, at 49706.

[21] *See id.*

[22] *See id.*

[23] *See id.*

[24] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(4).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(8).

[28] *See* Notice, *supra* note 3 at 49705.

[29] *See* Original Approval Order, *supra* note 4, at 79266 (finding that it is reasonable for Nasdaq to provide different services to tiers based on market capitalization since larger capitalized companies generally will need and use more services). *See also* Notice, *supra* note 3, at 49707. The Commission notes that, as stated in the 2014 Approval Order, all listed companies receive some services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk. *See* 2014 Approval Order, *supra* note 4, at 44235.

[30] *See* Notice, *supra* note 3, at 49707. As noted by the Exchange in its prior filing, it offers more services to larger companies because they need more and different governance, communications, and intelligence services. *See* Original Approval Order, *supra* note 4, at 79265.

[31] *See* Notice, *supra* note 3, at 49707. The Commission notes that in a prior filing Nasdaq reduced its market analytic tools to all Eligible Companies from four users to two users based on Nasdaq's experience with company use of the service.

to forego the services offered by NYSE and switch to Nasdaq.[32] Based on the above, the Commission believes that the Exchange has provided a sufficient basis for providing additional services to certain Eligible New Listings and Eligible Switches, as well as varying services to these different categories of listings, and that these changes do not unfairly discriminate among issuers and reflect the competitive environment for exchange listings for transfers from a competing exchange.[33]

Further, the Commission believes that it is consistent with the Act for the Exchange to reinstate the four year term for services provided to Eligible Switches with a market capitalization of $750 million or more. According to the Exchange, this change reflects Nasdaq's ongoing assessment of the competitive market for listings.[34] Specifically, the Exchange has represented that it faces competition in the market for listing services and that it competes in part by offering valuable services to listed companies.[35] The Exchange states that the proposed changes will result in a more enticing package for potential listings and therefore will enhance competition among listing exchanges.[36] Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.[37]

Finally, the Commission believes that it is reasonable, and in fact required by Section 19(b) of the Exchange Act, that Nasdaq amend IM–5900–7 to update the rule text to reflect the actual retail values of the services offered, which have changed since the original adoption of the rule.[38] The Commission also believes it is reasonable for the Exchange to make certain non-substantive changes, as described above, to the names and descriptions of certain services provided. This provides greater transparency to Nasdaq's rules and the fees applicable to companies listing on the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–NASDAQ–2016–098), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22155 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78801; File No. SR–NYSEARCA–2016–123]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 7.46 Relating to the Tick Size Pilot Program

September 9, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 25, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.46 to (1) describe system functionality requirements necessary to implement the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS[4] under the Act (the "Plan") and (2) clarify the operation of certain exceptions to the Trade-at Prohibition[5] on Pilot Securities in the third test group. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.46 to (1) describe system functionality requirements necessary to implement the Plan[6] and (2) clarify the operation of certain exceptions to the Trade-at Prohibition[7] on Pilot Securities in the third test group ("Test Group Three").[8]

The Plan is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes to amend Rule 7.46, which has been adopted on a two-year pilot period that coincides with the pilot period for the Plan, which is currently scheduled to begin on October 3, 2016.

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[32] *See id.* at 49706. *See also* Securities Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (SR–NYSE–2015–36).

[33] *See* 2014 Approval Order, *supra* note 4, at 44235.

[34] *See* Notice, *supra* note 3, at 49707. The Commission notes that the Original Approval Order found four years of services for Eligible Switches as consistent with the Act. As noted above, Nasdaq had reduced services to Eligible Switches from four to three years in 2014 and is now proposing to change back to four years of services for these transfers for competitive reasons. *See id.* at 49706 & n.13. *See also supra* note 32 and accompanying text.

[35] *See* Notice, *supra* note 3, at 49707 & n.13.

[36] *See id.* at 49708.

[37] 15 U.S.C. 78f(b)(8).

[38] We would expect Nasdaq, consistent with Section 19(b) of the Act, to periodically update the retail values of services offered should they change. This will help to provide transparency to listed companies on the value of the free services they receive and the actual costs associated with listing on Nasdaq.

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.608.

[5] Rule 7.6(e)(4)(A) defines the "Trade-at Prohibition" to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

[6] *See* Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4–657) ("Tick Plan Approval Order"). *See,* also, Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4–657), 80 FR 70284 (File No. 4–657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016. The Plan was submitted to the Commission pursuant to Rule 608 of Regulation NMS. 17 CFR 242.608.

[7] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[8] *See infra* notes 14–17 and accompanying text for a description of Test Group Three.

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. (f/k/a EDGA Exchange, Inc.), Bats EDGX Exchange, Inc. (f/k/a EDGX Exchange, Inc.), Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and the Exchange (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[9] and Rule 608 of Regulation NMS thereunder, the Plan to Implement a Tick Size Pilot Program.[10] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[11] The Plan was published for comment in the **Federal Register** on November 7, 2014,[12] and approved by the Commission, as modified, on May 6, 2015.[13]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Tick Size Pilot Program will enable the Commission to assess whether wider tick sizes would enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Tick Size Pilot Program will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Tick Size Pilot Program will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[14] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[15] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[16] Pilot Securities in Test Group Three will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid or "Best Protected Offer," unless an enumerated exception applies.[17] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS ("Rule 611")[18] will apply to the Trade-at requirement.

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraphs (a) and (c)–(e) of Rule 7.46 to require ETP Holders to comply with the quoting and trading provisions of the Plan.[19] The Exchange also adopted paragraph (b) of Rule 7.46 to require ETP Holders to comply with the data collection provisions under Appendix B and C of the Plan.[20]

Trade-At Intermarket Sweep Orders

The Plan defines a Trade-at Intermarket Sweep Order ("ISO") as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs.[21]

The Exchange clarified the use of an ISO in connection with the "Trade-at" requirement in Test Group Three by adopting a comprehensive definition of "Trade-at ISO" under Rule 7.46(a)(1)(D).[22] The Exchange now proposes to further clarify that, when a Trade-at ISO is routed to a Trading Center, when simultaneously routing additional limit orders to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, such additional limit orders can be routed as either Trade-at ISOs or ISOs. Therefore, the Exchange is proposing to distinguish Trade-at from ISOs by adding the phrase "or Intermarket Sweep Orders" to the end of Rule 7.46(a)(1)(D)(ii), so that any such additional routed orders sent to execute against the Trade-at ISO limit order would need to be marked as either Trade-at ISOs or ISOs, as applicable.

Likewise, the Exchange is proposing to amend Rule 7.46(e)(4)(C)(x) to add the phrase "or Intermarket Sweep Orders" into the Trade-at ISO exemption to the Trade-at Prohibition, to clarify that a Trading Center can simultaneously route Trade-at ISOs or ISOs to execute against the full displayed size of the Protected Quotation that was traded at.

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[9] 15 U.S.C. 78k–1.

[10] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[11] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[12] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[13] *See* Tick Plan Approval Order, *supra* note 6. *See,* also, Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

[14] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[15] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[16] *See* Section VI(C) of the Plan.

[17] *See* Section VI(D) of the Plan.

[18] 17 CFR 242.611.

[19] *See* Securities Exchange Act Release No. 77947 (May 31, 2016), 81 FR 36361 (June 6, 2016) (SR–NYSEArca–2016–76) ("Quoting & Trading Rules Proposal").

[20] *See* Securities Exchange Act Release No. 77484 (March 31, 2016), 81 FR 20024 (April 6, 2016) (SR–NYSEArca–2016–52).

[21] *See* Plan, Section I(MM).

[22] Rule 7.46(a)(1)(D) defines Trade-at Intermarket Sweep Order to mean a limit order for a Pilot Security that meets the following requirements:

(i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

(ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

Block Size Exemption to Trade-At

The Plan defines Block Size as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000. The Block Size exception to the Trade-at Prohibition permits a Trading Center to immediately execute a Block Size order against displayed and undisplayed liquidity at a price equal to the National Best Bid or National Best Offer, as applicable, without satisfying all Protected Quotations at the National Best Bid or National Best Offer, as applicable.[23]

The Exchange is proposing to amend Rule 7.46(e)(4)(C)(iii) to clarify how the Block Size exception to the Trade-at Prohibition would operate under the requirements of the Plan. The Exchange proposes to delete subparagraph (C) of Rule 7.46(e)(4)(C)(iii), which state that, to qualify for the Block Size exception, the order may not be executed on multiple Trading Centers. By deleting this requirement, the Block Size exception to the Trade At Prohibition would apply to an order received by a market that has sufficiently liquidity to execute such Block Size, irrespective of whether the receiving market routes a portion of the Block Size order to another Trading Center to comply with Rule 611 or Regulation NMS. Any routed interest that returns unexecuted may be immediately executed under the same Block Size exception, provided such interest remains marketable.

Proposed Amendments to Rule 7.46 for Tick-Pilot Specific System Changes

The Exchange proposes to add paragraph (f) of Rule 7.46 to describe changes to system functionality necessary to implement the Plan. Paragraph (f) of Rule 7.46 would set forth the Exchange's specific procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two, and Three.

In determining the scope of these proposed changes to implement the Plan, the Exchange reviewed its order types and identified which orders and instructions would be inconsistent with the Plan and propose to modify the operation of such order types so they will comply with the Plan, or, to the extent inconsistent with the Plan, eliminate them. These proposed changes are designed to comply with the Plan and to allow the Exchange to meet its regulatory obligations under the Plan.

As part of this review, the Exchange identified order types that were designed to comply with the requirements of Regulation NMS. Among other things, Regulation NMS requires a trading center to have policies and procedures to reasonably avoid displaying quotations that lock or cross any protected quotation[24] and to prevent trade-throughs in NMS stocks that do not fall within an exception enumerated in Rule 611(b) to Regulation NMS.[25] As such, under Regulation NMS, an exchange may rank undisplayed orders at the price of a protected quotation on an away market and execute such non-displayed orders at the price of a protected quotation on an away market. By contrast, in Test Group Three, an undisplayed order may not trade at the price of a protected quotation on an away market. Accordingly, as described below, in order to comply with the Plan for Test Group Three securities, the Exchange is proposing to modify the behavior of specified orders that are currently permitted to trade undisplayed at the price of the PBBO or NBBO.

As described in greater detail below, the Exchange is also proposing to reject specified orders in Pilot Securities in Test Group Three because the operation of such order types are, by their terms, inconsistent with the requirements of the Trade At Prohibition.

Proposed Rule 7.46(f)(1)—Trade-At Intermarket Sweep Orders

Proposed Rule 7.46(f)(1) would describe the handling of Trade-at Intermarket Sweep Orders ("TA ISO") on the Exchange. As described above, the requirements for an ETP Holder that enters a TA ISO are specified in Rule 7.46(a)(1)(D)(ii) and differ from the requirements for an ETP Holder that enters an IOC ISO (as specified in Rule 7.31P(e)(3)(A)). However, the Exchange will handle a TA ISO the same way it handles an IOC ISO in all securities.

As proposed in Rule 7.46(f)(1)(A), the Exchange would accept TA ISOs in all securities. Further, TA ISOs must be designated as IOC, may be designated with a "No Midpoint Execution" modifier, may not be designated with a minimum trade size, and do not route. These requirements are based on existing IOC functionality, as specified in Rule 7.31P(b)(2) governing IOC Modifiers, and IOC ISO functionality, as specified in Rule 7.31P(e)(3)(B).

In addition, proposed Rule 7.46(f)(1)(B) would provide that a TA ISO would be immediately traded with contra-side displayed and non-displayed interest in the NYSE Arca Book up to its full size and limit price and the quantity and the quantity not so traded will be immediately and automatically cancelled. This proposed rule text is based on current Rule 7.31P(e)(3)(B).

Proposed Rule 7.46(f)(2)—Pilot Securities in Test Groups One, Two, and Three

Proposed Rule 7.46(f)(2) would describe the procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two and Three.

- Proposed Rule 7.46(f)(2)(A) would provide that references in Exchange rules to the minimum price variation ("MPV"), as defined in Rule 7.6, would instead mean the quoting MPV specified in paragraphs (c), (d), and (e) of this Rule. This proposed rule text promotes transparency in Exchange rules to be clear that if a rule specifies that an order will be priced based off of the MPV, for Pilot Securities in Test Groups One, Two, and Three, the applicable MPV will be the quoting MPV required by the Plan.[26] For example, Rule 7.31P(e)(1) provides that if an Arca Only Order is marketable against Exchange interest or would lock or cross a protected quotation in violation of Rule 610(d) of Regulation NMS, the order to buy (sell) will be re-priced as provided for in Rule 7.31P(e)(1)(A)(i)–(iv), including being assigned a display price one MPV below (above) the PBO (PBB). For Pilot Securities in Test Groups One, Two, and Three, the applicable MPV would be $0.05. Proposed Rule 7.46(f)(2)(A) would further provide that references to truncating to the MPV in Exchange rules would instead mean rounding down to the applicable quoting MPV for Pilot Securities in Test Groups One, Two and Three. For example, if a value would come to a $0.09 price, it would be rounded down to a $0.05 increment, which is the nearest quoting MPV for Pilot Securities in Test Groups One, Two, and Three.
- Proposed Rule 7.46(f)(2)(B) would provide that Mid-Point Liquidity Orders ("MPL Orders")[27] must be entered with

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[23] *See* Plan, Section VI(D).

[24] *See* 17 CFR 242.610(d).

[25] *See* 17 CFR 242.611(b).

[26] *See, e.g.,* Rules 7.31P(a)(1)(B)(i) and (ii), 7.35P(a)(10)(A) and (B), and 7.31P(e).

[27] An MPL Order is a Limit order priced at the midpoint of the PBBO and not displayed. An order designated as an MPL Order will not route or trade-through a Protected Quotation. MPL Orders shall have a minimum order entry size of one share and such orders, if entered without a limit price or with a FOK modifier, are rejected. As described in Rules 7.46(c), (d)(1) and (e)(1), orders priced to trade at

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a limit price in a $0.05 pricing increment. While MPL Orders in all Test Groups would be eligible to trade at the midpoint of the PBBO, which may not be in a $0.05 pricing increment, the Exchange proposes that the limit price specified for such orders must be in the quoting MPV for Test Groups One, Two, and Three.

Proposed Rule 7.46(f)(3)—Pilot Securities in Test Groups One and Two

Proposed Rule 7.46(f)(3) would describe the procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups One and Two.

- A Market Pegged Order to buy (sell), as set forth in Rule 7.31P(h)(1)(C), may include an offset value that will set the working price below (above) the PBO (PBB) by the specified offset, which may be specified up to two decimals. Proposed Rule 7.46(f)(3) would provide that an offset included with a Market Pegged Order in Pilot Securities in Test Groups One and Two must be in pricing increments of $0.05.

Proposed Rule 7.46(f)(4)—Pilot Securities in Test Groups Two and Three

Proposed Rule 7.46(f)(4) would describe the procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups Two and Three.

- A Retail Price Improvement Order, as set forth in Rule 7.44P(a)(4), consists of non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that would trade at prices better than the PBB or PBO by at least $0.001 and that is identified as such. Consistent with the requirements of the Plan, which requires a minimum of $0.005 price improvement in retail programs in Test Groups Two and Three instead of the $0.001 price improvement specified in Rule 7.44P, proposed Rule 7.46(f)(4) would provide that Retail Price Improvement Orders in Pilot Securities in Test Groups Two and Three must be entered in pricing increments of $0.005.

Proposed Rule 7.46(f)(5)—Pilot Securities in Test Group Three

Proposed Rule 7.46(f)(5) would describe the procedures for handling, executing, re-pricing and displaying certain order types and order type instructions applicable to Pilot Securities in Test Group Three. The proposed changes to order behavior for Pilot Securities in Test Group Three are designed to comply with the Trade-at Prohibition by changing the ranking and working price of orders that trade at non-displayed prices unless the execution is eligible for an exception.

- Proposed Rule 7.46(f)(5)(A)(i)–(iv) would provide for the priority of resting orders at each price point for Pilot Securities in Test Group Three. Rule 7.36P(e) sets forth the priority of orders for all other securities, including that Priority 1—Market Orders always have first priority. In addition, protected quotations are not included in the ranking in Rule 7.36P(e) because at a price point, the Exchange may trade with all displayed and non-displayed interest before routing to a protected quotation. In order to meet the requirements of the Trade-at Prohibition, the Exchange proposes to revise the priority of resting orders, as follows:
  - ○ First priority would be given to Priority 2—Display Orders, which are non-marketable Limit Orders with a displayed working price. This is consistent with the Trade-at Prohibition, whose objective is to promote the display of liquidity and generally to prevent any Trading Center that is not quoting from price-matching protected quotations.

    Second priority would be given to protected quotations of Away Markets. This would be a new priority category that would be applicable only to Pilot Securities in Test Group Three and would reflect the requirement in the Trade-at Prohibition to trade with protected quotations on Away Markets before trading with any undisplayed interest at a price.
  - ○ Third priority would be given to Priority 3—Market Orders, which are unexecuted Market Orders. Because unexecuted Market Orders are not displayed, such orders would have priority behind protected quotations at the same price on Away Markets. Ranking unexecuted Market Orders next is consistent with the current ranking process, pursuant to which Market Orders are ranked ahead of non-displayed Limit Orders.
  - ○ Fourth priority would be given to Priority 3—Non-Display Orders, which are non-marketable Limit Orders for which the working price is not displayed, including reserve interest of Reserve Orders. This proposed ranking is consistent with the ranking set forth in Rule 7.36P(e). As described below, because the Exchange would not be offering Tracking Orders in Pilot Securities in Test Group Three, proposed Rule 7.46(f)(5)(A) would not need to reference Priority 4—Tracking Orders.
- Proposed Rule 7.46(f)(5)(B) would provide that orders would not be routed to Away Markets that are not displaying protected quotations. As defined in Rule 1.1(ffP), the term "Away Market" includes alternative trading systems and other broker-dealers with which NYSE Arca Marketplace maintains an electronic linkage and which provides instantaneous responses to orders routed from the NYSE Arca Marketplace. However, because such markets do not display protected quotations, the Exchange will not route orders in Pilot Securities in Test Group Three to such Away Markets.
- Proposed Rule 7.46(f)(5)(C) would provide that the display price of Limit Orders to buy (sell) repriced under Rule 7.31P(a)(2)(C) would be the same as provided for in that rule, but the working price of such orders would be the same as the display price. Rule 7.31P(a)(2)(C) specifies re-pricing of displayed Limit Orders to prevent the Exchange from locking or crossing the PBBO. Under such re-pricing, the Exchange assigns a display price one MPV below (above) the contra-side PBO (PBB), and a working price equal to the contra-side PBBO. As proposed, in Test Group Three, to avoid ranking orders undisplayed at the price of a protected quotation, the Exchange proposes to assign a working price equal to the re-priced display price under Rule 7.31P(a)(2)(C).
- Proposed Rule 7.46(f)(5)(D) would apply to Reserve Orders in Pilot Securities in Test Group Three, and would provide that if a Reserve Order to buy (sell) is displayed at a price that is locked or crossed by a protected offer (bid), the portion of the Reserve Order that is not displayed would be assigned a working price of $0.05 below (above) the protected offer (bid), but if routable, would route to a protected offer (bid) based on the limit price of the order. A Reserve Order is defined in Rule 7.31P(d)(1) as a Limit or Inside Limit Order with a quantity of the size displayed and with a reserve quantity of the size ("reserve interest") that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders and the reserve interest is ranked Priority 3—Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the NYSE Arca Book or route to Away Markets.
- Proposed Rule 7.46(f)(5)(E) would provide that if the limit price of a

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the midpoint of the PBBO, *i.e.*, MPL Orders, may be ranked in increments less than $0.05.

resting Limit Non-Displayed Order to buy (sell) is equal to or higher (lower) than the PBO (PBB), it would have a working price $0.05 below (above) the PBO (PBB). Under Rule 7.31P(d)(2)(A), if the limit price of a Limit Non-Displayed Order to buy (sell) is equal to the PBO (PBB), it will be assigned a working price equal to the limit price, *i.e.,* the same price as the PBO (PBB). To avoid ranking non-displayed orders at the price of the PBBO, the Exchange proposes that for Pilot Securities in Test Group Three, a Limit Non-Displayed Order would be assigned a working price one MPV off of the PBBO.

- Proposed Rule 7.46(f)(5)(F) relates to orders in Pilot Securities in Test Group Three with instructions not to route, as defined in Rule 7.31P(e).[28] As proposed in Rule 7.46(f)(5)(F)(i), on arrival, orders with instructions not to route would trade with resting orders in the NYSE Arca Book consistent with the terms of the order and the Trade-at Prohibition. Because an ETP Holder that enters a Day ISO to buy (sell) must simultaneously route one or more limit orders to execute against the full displayed size of any protected offer (bid), an ETP Holder entering a Day ISO would have met the obligations specified in Rule 7.46(e)(4)(C)(ix). Accordingly, proposed Rule 7.46(f)(5)(F)(i)(A) would provide that on arrival, Day ISOs would be eligible for the exception set forth in Rule 7.46(e)(4)(C)(ix). Additionally, proposed Rule 7.46(f)(5)(F)(i)(B) would provide that an IOC ISO to buy (sell) would not trade with orders to sell (buy) ranked Priority 1—Market Orders or Priority 3—Non-Display Orders that are the same price as a protected offer (bid) unless the limit price of such IOC ISO is higher (lower) than the price of the protected offer (bid). As such, an arriving IOC ISO would be permitted to trade with undisplayed orders resting on the NYSE Arca Book only if the limit price of the arriving IOC ISO order is better than the PBBO. This would be permitted under the Trade-at Prohibition because to enter an IOC ISO to buy (sell) at a price higher (lower) than PBO (PBB), the entering firm would have been required to simultaneously route limit orders to execute against the full displayed size of the PBO (PBB).
- Proposed Rule 7.46(f)(5)(F)(ii) would provide that when an Arca Only Order or ALO Orders is being added to the NYSE Arca Book, such orders to buy (sell) with a limit price equal to or above (below) the PBO (PBB) would be assigned a display price and working price one MPV below (above) the PBO (PBB). Currently, Rule 7.31P(e)(1)(A)(i) provides that an Arca Only Order to buy (sell) is priced with a working price of the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). For Pilot Securities in Test Group Three, to avoid assigning a working price that is equal to the PBBO and that differs from a display price, the Exchange proposes that the working price of an Arca Only would be the same as the display price.
- Proposed Rule 7.46(f)(5)(iii) would provide that once an Arca Only Order or ALO Order to buy (sell) is resting on the NYSE Arca Book, such orders would not be eligible to trade with later-arriving orders to sell (buy) ranked Priority 2—Display Orders priced equal to the PBO (PBB). The proposed rule further provides that a later-arriving order to buy (sell) that is eligible to trade with the PBO (PBB) may trade before such resting order. This proposed rule text makes clear that once an Arca Only is assigned a working price, it will not be repriced if the PBBO does not change. In such case, a later-arriving order that is on the same side of the market as the resting Arca Only Order and is eligible to trade with the PBBO may trade ahead of the resting Arca Only Order. For example, assume that the Exchange receives an Arca Only Order to buy ("A") priced at $10.15 and the PBO is $10.10 and the Exchange Best Offer is $10.15. On arrival, pursuant to proposed Rule 7.46(f)(5)(ii), Order A would be assigned both a working and display price of $10.05, *i.e.,* one MPV below the PBO of $10.10. Assume now the Exchange receives a sell order priced at $10.10. The Exchange publishes this offer because it matches the price of the away PBO. Assume next that the Exchange receives another Arca Only Order to buy ("B") priced at $10.15. On arrival, Order B will trade consistent with the terms of the order and the Trade-at Prohibition, and therefore may trade with the Exchange's displayed offer at $10.10. In such case, even though Order A was received before Order B, Order A would not be repriced to trade with the Exchange offer at $10.10. Any remaining quantity of Order B would be added to the NYSE Arca Book at $10.05, *i.e.,* one MPV below the away market PBO. At this point, consistent with Rule 7.36P(f)(1), Order B would be assigned a working time after Order A's working time, and therefore, for any subsequent executions at that price point, Order A would trade before Order B.
- Proposed Rule 7.46(f)(5)(G) would provide that the only orders eligible for the exception set forth in Rule 7.46(e)(4)(C)(iii) would be Limit IOC Cross Orders that meet the Block Size definition under the Plan. A Limit IOC Cross Order is defined in Rule 7.31P(g)(1) as a two-sided order with instructions to match the buy-side with the identified sell-side at a specified price and that does not route and will cancel at the time of entry if the cross price is not between the BBO or would trade through the PBBO. Rule 7.46(e)(4)(iii), described in more detail above, sets forth the Block Size exception to the Trade-At Prohibition. The Exchange believes that orders that meet the Block Size definition and that are entered as a Limit IOC Cross Order would meet this exception because such orders are required to trade in full at price or be rejected, *e.g.,* if at the same price as the BBO. Currently, the Limit IOC Cross Order is designed to comply with Rule 611(b) of Regulation NMS in that it is permitted to trade at the PBBO, provided it does not trade at the Exchange BBO. For Pilot Securities in Test Group Three, a Limit IOC Cross Order that meets the Block Size definition would therefore operate no differently than Limit IOC Cross Orders of any size in any other security. However, because Limit IOC Cross Orders that do not meet the Block Size definition would not be eligible to trade at the PBBO, the Exchange proposes to provide that a Limit IOC Cross Order that is at the same price as the PBBO but does not meet the Plan's Block Size definition would be rejected.
- Proposed Rule 7.46(f)(5)(H) would provide that Market Pegged Orders and Tracking Orders would be rejected. The Exchange proposes to reject these order types for Pilot Securities in Test Group Three because they are designed in compliance with Rule 611 to be non-displayed orders that price match protected quotations, which would be prohibited under the Trade-at Prohibition.

As described in Rule 7.31P(d)(4), a Tracking Order is an order that is not displayed, does not route, and will trade only with an order that is eligible to trade. The working price of a Tracking Order is the same-side PBBO. As further described in Rule 7.31P(d)(4)(A), a Tracking Order does not trade on arrival and is triggered to trade by a contra-side order that has (i) exhausted all other interest eligible to trade at the Exchange,

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[28] The proposed rule would be applicable to Arca Only Orders, ALO Orders and Intermarket Sweep Orders. An Arca Only Order is a Limit Order that does not route. *See* Rule 7.31P(e)(1). An ALO Order is an Arca Only Order that, with some exceptions, will not remove liquidity from the NYSE Arca Book and must have a minimum on one displayed round lot. *See* Rule 7.31P(e)(2). An Intermarket Sweep Order is a Limit Order that does not route and meets the requirements of Rule 600(b)(30) of Regulation NMS. *See* Rule 7.31P(e)(3).

(ii) has a remaining quantity equal to or less than the size of the resting Trading Order, and (iii) would otherwise route to an Away Market. As such, the Tracking Order is designed in compliance with Rule 611 to be resting non-displayed interest, priced at the PBBO, and that would be triggered to trade only by an order that would otherwise route and in so doing, price-matches Away Market protected quotations.

Similarly, as described in Rule 7.31P(h)(1), once resting on the NYSE Arca Book, a Market Pegged Order is a non-displayed order with a working price pegged to the contra-side PBBO. As such, the Market Pegged Order is designed to be in compliance with Rule 611 to price match protected quotations. As discussed above, unlike Rule 611(b) of Regulation NMS, the Trade-At Prohibition applicable for Pilot Securities in Test Group Three prevents a trading center that was not quoting from price-matching protected quotations. Because both Tracking Orders and Market Pegged Orders are designed as non-displayed resting orders that price-match protected quotations, which would not be permitted in Test Group Three, these order types are inconsistent with the Plan. Therefore, the Exchange proposes not to make these order types available in Test Group Three. As proposed, Tracking Orders or Market Pegged Orders entered in Test Group Three Pilot Securities would be rejected. The Exchange believes that rejecting such orders in Pilot Securities for Test Group Three would promote transparency in the Exchange's rule book that the Tracking Order and Market Pegged Order functionality would not be available under the Trade-at Prohibition.

Proposed Amendments to Other Exchange Rules

The Exchange also proposes amendments to Rule 7.11P, which governs the Limit Up/Limit Down ("LULD") price controls pursuant to the NMS Plan to Address Extraordinary Market Volatility ("LULD Plan"),[29] Rule 7.31P(a)(2)(B) governing Limit Order Price Protection, and Rule 7.35P(a)(8) governing the definition of Indicative Match Price. These proposed rule changes are designed to facilitate compliance with the Plan and would be applicable across all securities that trade at the Exchange, regardless of the applicable MPV.

In particular, the Exchange proposes to add a new subsection (9) to Rule 7.11P(a) that would specify that, after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the SIP under the LULD Plan, the Exchange will calculate Price Bands based on the first Reference Price provided to the SIP and, if such Price Bands are not in the MPV for the security, round such Price Bands to the nearest price at the applicable MPV. The Exchange would apply this standard rounding calculation regardless of the MPV of the security. As described above, pursuant to proposed Rule 7.46(f)(2)(A), references to MPV in Exchange rules instead mean the quoting MPV specified in Rules 7.46(c), (d), and (e).

The Exchange also proposes to amend Rule 7.31P(a)(2)(B), which describes the circumstance under which a Limit Order would be rejected, to specify that Limit Order Price Protection for both buy and sell orders that are not in the MPV for the security, as defined in Rule 7.6, would be rounded down to the nearest price at the applicable MPV. The Exchange further proposes to amend Rule 7.35P regarding Indicative Match Price. Under Rule 7.35P(a)(8), Indicative Match Price means the best price at which the maximum volume of shares, including non-displayed quantity of Reserve Orders, is tradable in the applicable auction, subject to the Auction Collars. The Exchange proposes to specify, as proposed in Rule 7.35P(a)(8)(F), that unless the Indicative Match Price is based on the midpoint of an Auction NBBO, if the Indicative Match Price is not in the MPV for the security, it would be rounded to the nearest price at the applicable MPV. In both such rounding scenarios, for Tick Pilot Securities, pursuant to proposed Rule 7.46(f)(2)(A), references to MPV in these rules would instead mean the quoting MPV specified in Rules 7.46(c), (d), and (e).

Proposed Non-Substantive Amendments to Rule 7.46

Finally, the Exchange proposes to make non-substantive, technical amendments to Rule 7.46. First, the Exchange proposes to amend Rule 7.46(a)(1)(D)(ii) to add the word "displayed" between the words "full" and "size" so that the full clause would provide "are routed to execute against the full displayed size of any protected bid." This proposed amendment makes the rule text parallel with the existing rule text that provides "or the full displayed size of any protected offer."

Second, the Exchange proposes to amend Rule 7.46(e)(4)(C)(xv) to correct a typographical error and change the word "bond" to "bona" when using the phrase "bona fide error."

Implementation Date

If the Commission approves the proposed rule changes, the proposed rule changes will be effective upon Commission approval and shall become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[30] in general, and furthers the objectives of Section 6(b)(5) of the Act[31] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The proposed rule change is designed to comply with the Plan, reduce complexity and enhance system resiliency while not adversely affecting the data collected under the Plan. Therefore, the Exchange believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan and, as discussed further below, other applicable regulations.

The Exchange believes that the proposed changes to order behavior for Pilot Securities in Test Group Three would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed, and necessary, to modify order behavior to comply with the Trade-at Prohibition by eliminating the ability for orders with a non-displayed working price to price match protected quotations. As the Commission noted in the Tick Plan Approval Order, the Plan is reasonably designed to provide measurable data that should facilitate the ability of the Commission, the public, and market participants to review and analyze the effect of tick size on the trading, liquidity, and market quality of securities of smaller capitalization companies.[32] The Plan thus provides for a mechanism to provide a data-driven approach to evaluate whether certain changes to market structure for Pilot Securities would be consistent with the Commission's mission to protect investors, maintain fair and orderly and efficient markets, and facilitate capital formation.[33] By having three test groups, the data that will be collected will demonstrate how behavior will change based on the differing requirements of the test groups. Because there are different requirements for the three Test Groups, a logical consequence is that order behavior will change depending on the requirements of each Test Group, which is the purpose of having a pilot with three test groups.

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[29] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

With respect to Pilot Securities in Test Group Three, the Commission recognized the particular complexity of implementing and complying with the Trade-at Prohibition, including that trading centers would need to "monitor protected quotations on other trading centers and prevent an execution that would match the price of any such quotation unless the trading center itself was displaying a protected quotation" and that "compliance with the Trade-at Prohibition would require systems changes by trading centers." [34] Trading centers that are not registered exchanges will be able to implement compliance with the Trade-at Prohibition by modifying the behavior of order types that currently price match protected quotations and without public notice and without filing any rule changes with the Commission. Such modified behavior would be applicable, and indeed required, only for Pilot Securities in Test Group Three. Applying the modified order behavior for compliance with the Trade-at Prohibition to Pilot Securities in other Test Groups would moot the differences between the Test Groups, which would thwart the ability to assess any meaningful differences in order behavior for the three Test Groups.

As a trading center, the Exchange must also modify behavior of order types to comply with the Trade-at Prohibition. However, as a registered exchange, the Exchange has rules that are filed with the Commission that describe in detail order behavior, including current order behavior that is designed in compliance with Rules 610(d) and 611 of Regulation NMS. These existing rules provide for non-displayed order types to price match protected quotations even if not displaying a quote at that price. Unlike a trading center that is not a registered exchange, the Exchange is required to file a proposed rule change to describe how it would modify order behavior in compliance with the Plan.[35] For the Exchange to implement compliance with the Plan, and specifically the requirements of the Trade-at Prohibition, the Exchange assessed its order type behavior and identified those changes that would be necessary to prevent an execution on a non-displayed order that would match the price of protected quotation unless that Away Market is displaying a protected quotation.

More specifically, the Exchange believes that the proposed changes regarding ISOs, MPL Orders, Market Pegged Orders, Tracking Orders, RPI Orders, priority of resting orders, Reserve Orders, Limit Non-Displayed Orders and Orders with instructions not to route are consistent with the Act because they are intended to modify the Exchange's system to comply with the provisions of the Plan and the different requirements for the three Test Groups and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. For Pilot Securities in Test Group Three, the Exchange believes that the proposed modifications to order behavior are designed to prevent executions of orders with a non-displayed working price from price matching a protected quotation. These are precisely the type of order behavior changes contemplated by the Plan; complying with the Trade-at Prohibition by definition requires differing order behavior as compared to the other Test Groups or the control group. For example, both Tracking Orders and Market Pegged Orders are designed in compliance with Rule 611, which permits non-displayed orders to price match a protected quotation. If such orders cannot trade at the price of the PBBO, such order types are moot; there is no alternate behavior for such orders. As such, the Exchange proposes to reject those order types in Pilot Securities in Test Group Three. Similarly, the Exchange proposes that order types with a non-displayed working price that is equal to the PBBO would be re-priced to assure that such orders would not price match a protected quotation in violation of the Trade-at Prohibition. The Exchange would not apply these order behavior changes to Pilot Securities in Test Groups One and Two because to do so would subvert the quality of data collected; Test Groups One and Two do not have the Trade-at Prohibition and therefore non-displayed orders in those Test Groups may price match a protected quotation, provided such executions are in the applicable MPV for the security. Because these proposed rule changes are intended to comply with the Plan, the Exchange believes that these proposals are in furtherance of the objectives of the Plan, as identified by the Commission, and are therefore consistent with the Act.

The Exchange further believes that the proposed amendments to Rules 7.11P, 7.31P(a) and 7.35P would remove impediments to and perfect the mechanism of a free and open market and a national market system as they provide transparency regarding (1) how the Exchange would calculate and round Price Bands under the LULD Plan after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the SIP, (2) that Limit Order Price Protection for both buy and sell orders that are not in the MPV for the security will be rounded down to the nearest price at the applicable MPV, and (3) when the Exchange would round down the Indicative Match Price if it is not in the MPV for an applicable security. The Exchange proposes to implement these changes for all securities, not only Pilot Securities under the Plan. As provided for in proposed Rule 7.46(f)(2)(A), any references to MPV in these rules would instead mean the quoting MPV specified in Rule 7.46(c), (d), and (e).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to assist the Exchange in meeting its regulatory obligations pursuant to the Plan, reduce system complexity and enhance resiliency. The Plan requires all trading centers, including over-the-counter markets, to implement changes to comply with the requirements of the Plan and specifically the Trade-at Prohibition. The Exchange fully expects that, in order to comply with the Trade-at Prohibition, trading centers other than registered exchanges will modify the behavior of orders for Pilot Securities in Test Group Three that will not be applied to Pilot Securities in Test Groups One and Two. Unlike such trading centers, as a self-regulatory organization, under Section 19(b)(1) of the Act,[36] the Exchange is required to file proposed rule changes for any modifications to order behavior that it proposes for the Plan. The absence of Commission approval of these proposed rule changes would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because trading centers that are not registered exchanges would be able to implement changes to comply with the Plan, but the Exchange would not. The Exchange believes that a disapproval of the Exchange's proposed rules would therefore put the Exchange at a competitive disadvantage vis-à-vis the over-the-counter markets because such trading centers would be able to modify the behavior of non-displayed orders in Test Group Three without restriction. The Exchange further notes that the proposed rule change will apply equally to all ETP Holders that trade Pilot Securities.

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[32] *See* Tick Plan Approval Order, *supra* note 6, at 27529.

[33] *Id.*

[34] *Id.* at 27530.

[35] Section 19(b)(1) of the Act requires that each self-regulatory organization shall file with the Commission, in accordance with Rule 19b–4 thereunder, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization. 15 U.S.C. 78s(b)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange respectfully requests accelerated effectiveness of this proposed rule change pursuant to Section 19(b)(2) of the Act.[37] The Exchange believes that there is good cause for the Commission to accelerate effectiveness because the proposed rule changes are designed to specify procedures for the handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two, and Three. In determining the scope of these proposed changes to implement the Plan, the Exchange reviewed its order types and identified which orders and instructions would be inconsistent with the Plan and propose to modify the operation of such order types so they will comply with the Plan, or, to the extent inconsistent with the Plan, eliminate them. These proposed changes are consistent with the protection of investors and the public interest because they are designed to comply with the Plan and to allow the Exchange to meet its regulatory obligations under the Plan. Because the Plan will be implemented beginning on October 3, 2016, the Exchange believes there is good cause to accelerate effectiveness so that the Exchange may implement the proposed changes concurrent with the implementation date of the Plan.

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2016–123 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–123. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–123, and should be submitted on or before September 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22150 Filed 9–14–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78798; File No. SR–BatsEDGX–2016–51]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.22(b) Regarding the Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

September 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2016, Bats EDGX Exchange, Inc. ("Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[36] 15 U.S.C. 78s(b)(1).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Exchange Rule 11.22(b) regarding the data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, the Exchange, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder,[7] the Plan to Implement a Tick Size Pilot Program (the "Plan").[8] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[9] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[13] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[14] will apply to the Trade-at requirement.

The Plan also requires a Trading Center[15] or a Market Maker[16] to collect and transmit certain data to its designated examining authority ("DEA"), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid and National Best Offer quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[17] On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.[18] As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

On March 16, 2016, the Exchange filed with the Commission a proposed rule change to adopt Exchange Rule 11.22(b) to implement the data collection requirements of the Plan.[19] On December 9, 2015, FINRA, on behalf of the Plan Participants, submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.[20]

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[5] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[9] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[11] *See* Section VI(B) of the Plan.

[12] *See* Section VI(C) of the Plan.

[13] *See* Section VI(D) of the Plan.

[14] 17 CFR 242.611.

[15] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[16] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[17] *See* Approval Order at 27533 and 27545.

[18] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4–657).

[19] *See* Securities Exchange Act Release No. 77416 (March 22, 2016), 81 FR 17225 (March 28, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–BatsEDGX–2016–01).

The Exchange also submitted a proposed rule change to implement the quoting and trading requirements of the Plan. *See* Securities Exchange Act Release No. 77791 (May 10, 2016), 81 FR 30375 (May 16, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–BatsEDGX–2016–14).

The Exchange now proposes to further amend Rule 11.22(b) to modify additional data collection and reporting requirements.[21] First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. The Exchange and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, *i.e.*, without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. The Exchange, therefore, proposes to modify Supplementary Material [sic].04 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. The Exchange and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than $0.10 away from the NBBO for purposes of Appendix B reporting. The Exchange therefore proposes to amend Supplementary Material [sic].06 to provide that limit orders priced more than $0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and The Exchange and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within $0.10 of the NBBO) (14). The Exchange and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are "resting." The Exchange, therefore, proposes to amend Supplementary Material [sic].06 to make this change.

In the fourth change, the Exchange proposes to add new Supplementary Material [sic].09 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. The Exchange and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. The Exchange is therefore proposing this change as part of Supplementary Material [sic].09. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. The Exchange and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and the Exchange is therefore proposing this change as part of Supplementary Material [sic].09.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the National Best Bid or National Best Offer (NBBO) at the time of or immediately before the trade for both share and trade participation calculations. The Exchange and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. The Exchange therefore proposes to make this change as part of Supplementary Material [sic].09.

Finally, the Exchange proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Supplementary Material [sic].10 provides that Pre-Pilot Data Collection Securities are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Exchange and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. According, the Exchange is revising Supplementary Material [sic].10 (which will be re-numbered as Supplementary Material [sic].11) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.[22]

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[20] *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted the Exchange a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, the Exchange, dated March 22, 2016 ("Exemption Letter").

[21] The Exchange notes that, in connection with this proposed rule change, FINRA, on behalf of the Plan Participants, intends to file an exemptive request seeking relief from certain of the Plan's data collection requirements.

[22] After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. The Exchange and the other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period—*i.e.*, September 3, 2016—the Exchange and the Exchange members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using the Exchange's published Pre-Pilot Data Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness. The Exchange has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [23] in general, and furthers the objectives of Section 6(b)(5) of the Act [24] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how the Exchange and Participants that operate Trading Centers collect and report data. The Exchange notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and Exchange Rule 11.22(b). In addition, the proposed rule change applies equally to all similarly situated members. Therefore, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) [26] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) [27] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[28] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that so that the proposed rule change can become operative on August 30, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[30]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–51 and should be submitted on or before October 6, 2016.

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[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22147 Filed 9–14–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78805; File No. SR–NYSE–2016–51]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending the Ninth Amended and Restated Operating Agreement of the Exchange

September 9, 2016.

I. Introduction

On July 22, 2016, New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Ninth Amended and Restated Operating Agreement of the Exchange ("Operating Agreement"). The proposed rule change was published for comment in the **Federal Register** on August 3, 2016.[3] The Commission received no comments in response to the Notice. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend the Operating Agreement to (1) change the process for nominating non-affiliated directors; and (2) replace an obsolete reference to NYSE Market (DE), Inc. ("NYSE Market (DE)").

A. Process for Nominating Non-Affiliated Directors

Pursuant to the Operating Agreement, at least 20 percent of the Exchange's Board of Directors ("Board") is made up of "Non-Affiliated Directors" (commonly referred to as "fair representation directors").[4] Pursuant to Section 2.03(a) of the Operating Agreement, the nominating and governance committee ("NGC") of the board of directors of ICE, the indirect parent of the Exchange, nominates the candidates for Non-Affiliated Directors, who are then elected by NYSE Group, Inc. ("NYSE Group") as the sole member of the Exchange. The Exchange proposes to amend Section 2.03(a) to have the Director Candidate Recommendation Committee ("DCRC") of the Exchange assume the role currently served by the ICE NGC and to make a conforming change to Section 2.03(h)(i).[5]

In addition, if the Exchange's Member Organizations endorse a Petition Candidate for Non-Affiliated Director pursuant to Section 2.03(a)(iv) of the Operating Agreement, the ICE NGC currently makes the determination of whether the person is eligible.[6] The Exchange proposes to amend Section 2.03(a)(iv) to have the Exchange make such determination instead of the ICE NGC.[7]

The Exchange explains that currently the nomination by the ICE NGC is the final step in the process for electing a Non-Affiliated Director.[8] First, the DCRC recommends a candidate, whose name then is announced to the Member Organizations.[9] The Member Organizations may propose alternate candidates by petition, and if there are no Petition Candidates, the DCRC recommends its candidate(s) to the ICE NGC.[10] If Petition Candidates are proposed, the ICE NGC makes the determination of whether the candidates are eligible to serve as a Non-Affiliated Director, and then all eligible candidates are submitted to the Member Organizations for a vote, after which the DCRC recommends to the ICE NGC the candidate receiving the highest number of votes.[11] The Exchange states that the ICE NGC is obligated to designate the DCRC-recommended candidate(s) as the nominee, and that NYSE Group is obligated to elect such candidate(s) as a Non-Affiliated Director.[12]

The Exchange believes that obligating the ICE NGC to nominate the candidates for Non-Affiliated Directors based on the DCRC's unalterable recommendation is neither necessary nor meaningful.[13] The Exchange notes that, pursuant to Section 2.03(a)(iii) of the Operating Agreement, the ICE NGC is obligated to designate whomever the DCRC recommends or, if there is a Petition Candidate, whoever emerges from the petition process.[14] According to the Exchange, the ICE NGC does not have any discretion.[15] The Exchange believes that removing this step would make the NYSE process with respect to the nomination of Non-Affiliated Directors more efficient.[16] Moreover, the Exchange believes that having the Exchange determine whether persons endorsed to be Petition Candidates are eligible to serve as Non-Affiliated Directors would be more efficient, as it would not require action by the ICE NGC, thereby potentially removing the possibility of any delay in the process.[17] The Exchange further states that the proposed change would be consistent with the petition processes of the Exchange's affiliate, NYSE MKT LLC ("NYSE MKT"), and of the Nasdaq Stock Market LLC, because each of these exchanges determines the eligibility of proposed nominees.[18]

The Exchange also believes that the proposed changes will make its process more consistent with the process by which its affiliates, NYSE MKT and NYSE Arca, Inc. ("NYSE Arca"), designate their fair representation directors, in which the ICE NGC plays no role.[19]

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[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 78436 (July 28, 2016), 81 FR 51249 ("Notice").

[4] *Id.* The Exchange notes that pursuant to Section 2.03(a) of the Operating Agreement, Non-Affiliated Directors are persons who are not members of the Board of Directors of Intercontinental Exchange, Inc. ("ICE") but qualify as independent and that a person may not be a Non-Affiliated Director unless he or she is free of any statutory disqualification, as defined in Section 3(a)(39) of the Act. *See id.* The Exchange's independence requirements are set forth in the Company Director Independence Policy of the Exchange. *See* Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR–NYSE–2012–17) (approving, among other things, the Exchange's Company Director Independence Policy).

[5] *See* Notice, *supra* note 3, at 51249.

[6] Pursuant to Section 2.02 of the Operating Agreement, "Member Organizations" refers to members, allied members and member organizations of the Exchange. "Petition Candidates" are defined in Section 2.03(a)(iv) of the Operating Agreement as alternate candidates proposed by Member Organizations by petition, pursuant to the requirements of that Section.

[7] *See* Notice, *supra* note 3, at 51249.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id. See also* Article II, Section 2.03(a) of the Ninth Amended and Restated Operating Agreement of NYSE MKT LLC; Securities Exchange Act Release No. 77901 (May 25, 2016), 81 FR 35092 (June 1, 2016) (SR–NYSEMKT–2016–26) ("NYSE MKT 2016 Release"); By-Laws of the Nasdaq Stock Market LLC, Art. II, Sec. 1(b) ("The Company may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director.").

Accordingly, the Exchange proposes to revise Section 2.03(a)(iii)—(v) of the Operating Agreement to amend the process for electing Non-Affiliated Directors.[20] First, as is currently the case, the DCRC would recommend a candidate, whose name would be announced to the Member Organizations, and the Member Organizations could propose alternate candidates by petition.[21] Next, if there were no Petition Candidates, the DCRC would nominate the candidate(s) whom it had previously recommended.[22] If there were Petition Candidates, the Exchange would make the eligibility determination regarding the Petition Candidates; all eligible candidates would be submitted to the Member Organizations for a vote; and the DCRC would nominate the candidate receiving the highest number of votes.[23] Finally, NYSE Group would be obligated to elect the DCRC-nominated candidate as a Non-Affiliated Director.[24]

In addition, the Exchange would make a conforming change to Section 2.03(h)(i) to state that the DCRC "will be responsible for nominating Non-Affiliated Director Candidates."[25] Currently, the provision states that the DCRC "will be responsible for recommending Non-Affiliated Director Candidates to the ICE NGC."[26]

B. Reference to NYSE Market (DE), Inc.

Section 2.02 of the Operating Agreement sets forth the Board's general supervision over Member Organizations and approved persons in connection with their conduct with or affecting Member Organizations. It provides that the Board "shall have supervision relating to the collection, dissemination and use of quotations and of reports of prices on NYSE Market (DE), Inc."[27] The Exchange proposes to amend Section 2.02 to replace the reference to NYSE Market (DE) with a reference to "the exchange operated by the Company."[28]

The Exchange explains that following the merger of New York Stock Exchange, Inc. with Archipelago Holdings, Inc., the Exchange and its subsidiaries NYSE Market (DE) and NYSE Regulation, Inc. entered into a Delegation Agreement, pursuant to which the Exchange delegated its market functions to NYSE Market (DE) and its regulatory functions to NYSE Regulation, Inc.[29]

The Exchange states that the Delegation Agreement terminated in April 2016 and, accordingly, NYSE Market (DE) no longer is delegated the Exchange's market functions, making the reference to NYSE Market (DE) in Section 2.02 of the Operating Agreement obsolete.[30] The Exchange, therefore, proposes to update the reference to NYSE Market (DE) with a reference to "the exchange operated by the Company."[31]

The Exchange states that the proposed change would be consistent with Article II, Section 2.02 of the operating agreement of the Exchange's affiliate NYSE MKT, which states that its board of directors "shall have supervision relating to the collection, dissemination and use of quotations and of reports of prices on the exchange operated by the Company."[32]

Finally, the Exchange proposes to make technical and conforming changes to the recitals and signature page of the Operating Agreement.[33]

III. Discussion and Commission's Findings

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[34] and the rules and regulations thereunder applicable to a national securities exchange.[35]

The Commission finds that the proposed rule change is consistent with Section 6(b)(1),[36] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,[37] which requires, among other things, that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs.

The proposed rule change would remove the requirement that the ICE NGC nominate the candidates for Non-Affiliated Directors and instead have the DCRC nominate the candidates for Non-Affiliated Director directly.[38] Because the ICE NGC currently is required to nominate the candidate recommended to it by the DCRC, this proposed change would remove an additional step in the process of nominating candidates for Non-Affiliated Director positions and thus may improve the efficiency of the nomination process.

In addition, the proposed rule change would remove the requirement that the ICE NGC make the determination of whether persons endorsed to be Petition Candidates are eligible to be a Non-Affiliated Director, and would have the Exchange make such determination instead. The proposed process would maintain an independent review of the eligibility of any Petition Candidates, while avoiding the potential conflict of interest that could arise if, for example, the DCRC were to be responsible for both proposing and nominating candidates and making eligibility determinations of Petition Candidates proposed by Member Organizations. The Commission previously considered and approved rules of other exchanges that similarly provide for those exchanges to determine the eligibility of proposed Petition Candidates.[39]

Finally, replacing the reference to NYSE Market (DE) in Section 2.02 of the Operating Agreement with a reference to

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[19] *See* Notice, *supra* note 3, at 51249–50. *See also* Article II, Section 2.03(a) of the Ninth Amended and Restated Operating Agreement of NYSE MKT LLC; NYSE MKT 2016 Release, *supra* note 18; Article III, Section 3.02 of the NYSE Arca Bylaws and NYSE Arca Rule 3.2(b)(2). The Exchange also notes that the board of directors of The NASDAQ OMX Group, Inc., the sole member of the Nasdaq Stock Market LLC, similarly plays no role in nominating or determining the eligibility of Member Representative Directors. *See* By-Laws of the Nasdaq Stock Market LLC, Art. II, Sec. 1.

[20] *See* Notice, *supra* note 3, at 51250.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *See* Article II, Section 2.02 of the Operating Agreement.

[28] *See* Notice, *supra* note 3, at 51250. The Exchange notes that references to the "Company" in the Operating Agreement are to the Exchange. *Id.*

[29] *See id. See also* Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837(October 2, 2015) (SR–NYSE–2015–27), at 59839.

[30] *See* Notice, *supra* note 3, at 51250.

[31] *Id.*

[32] *Id.* (citing Article II, Section 2.02 of the Ninth Amended and Restated Operating Agreement of NYSE MKT LLC).

[33] *Id.*

[34] 15 U.S.C. 78f.

[35] The Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(1).

[37] 15 U.S.C. 78f(b)(3).

[38] The Commission notes that the DCRC is appointed by the Board. *See* Section 2.03(h)(i) of the Operating Agreement.

[39] *See supra* note 18. *See generally* Securities Exchange Act Release No. 56876 (November 30, 2007), 72 FR 70357 (December 11, 2007) (SR–NASDAQ–2007–068) (approving process for electing Member Representative Directors).

"the exchange operated by the Company" would remove an obsolete reference to NYSE Market (DE) from the Operating Agreement. The Exchange explains that the Delegation Agreement pursuant to which the Exchange delegated its market functions to NYSE Market (DE) has expired, thereby making the reference to NYSE Market (DE) in Section 2.02 obsolete.[40] The Commission finds that eliminating such an obsolete reference would add clarity to the Exchange's rules and is consistent with the public interest and the protection of investors. The proposed addition of a reference to "the exchange operated by the Company" in Section 2.02 would clarify that the Board has general supervision relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange.

The Commission finds that the foregoing revisions to the Operating Agreement are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–NYSE–2016–51) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22154 Filed 9–14–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78807; File No. SR–FICC–2016–006]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Describe the Backtesting Charge and the Holiday Charge That May Be Imposed on Members

September 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2016, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Government Securities Division ("GSD") Rulebook (the "GSD Rules") and the Mortgage-Backed Securities Division ("MBSD") Clearing Rules (the "MBSD Rules") [3] in order to include two margin charges (the "Backtesting Charge" and "Holiday Charge" as further described below) that may be imposed on Netting Members of GSD and Clearing Members of MBSD (for purposes of this filing, GSD Netting Members and MBSD Clearing Members will be referred to as "Members" and each of the GSD and the MBSD shall be referred to as a "Division" and together as the "Divisions"). The Backtesting Charge is assessed for those Members whose portfolios experience backtesting deficiencies over the prior 12-month period, as described further below. The Backtesting Charge is calculated by each Division to mitigate exposures to the Division caused by settlement risks that may not be adequately captured by the Division's portfolio volatility model. The Holiday Charge is applied to all Members on the Business Day prior to any day on which the Corporation is closed, but the day is not observed as a holiday by the Securities Industry and Financial Markets Association and the bond markets are open ("Holiday"). The Holiday Charge addresses the risk exposure that a Member's portfolio on the applicable Holiday poses to the Corporation. The proposed rule change would amend GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions) to add the Backtesting Charge and the Holiday Charge as defined terms, including the manner and circumstances in which FICC calculates and imposes such charges, and would amend Section 1b of GSD Rule 4 (Clearing Fund and Loss Allocation) and Section 2(c) of MBSD Rule 4 (Clearing Fund and Loss Allocation) to include these charges as additional components of the Required Fund Deposit when applicable. FICC is filing this proposed rule change in order to provide transparency in the GSD Rules and MBSD Rules with respect to these existing charges, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change provides transparency in the GSD Rules and MBSD Rules with respect to the Backtesting Charge and Holiday Charge, two margin charges that each Division may temporarily impose on a Member as part of such Member's Required Fund Deposit.

A Division may impose the Backtesting Charge on a Member when the Division has observed deficiencies in the backtesting of such Member's Required Fund Deposit over the prior 12-month period, such that the Division determines the VaR Charge being calculated for that Member may not fully address the projected liquidation losses estimated from that Member's settlement activity.

The Holiday Charge addresses the risk exposure that occurs on Holidays when the Divisions are unable to collect Clearing Fund from Members. The Divisions impose the Holiday Charge on all Members to cover the additional day of exposure that is not contemplated in the prior day's VaR Charge.

(i) Background

A. Backtesting and the Required Fund Deposit

The GSD's Clearing Fund and the MBSD's Clearing Fund each address potential Member exposure through a number of risk-based component charges (as margin) calculated and assessed daily. Each of the component charges collectively constitute [sic] a Member's Required Fund Deposit with respect to each Division. The objective of the Required Fund Deposit is to mitigate potential losses to FICC associated with liquidation of the Member's portfolio in the event that the GSD and/or the MBSD ceases to act for a Member (hereinafter referred to as a "default"). FICC determines Required Fund Deposit amounts in both the GSD and the MBSD using risk-based margin methodologies that are intended to capture market price risk. The methodologies for each Clearing Fund use historical market moves to project or forecast the potential gains or losses on the liquidation of a defaulting Member's portfolio, assuming that a portfolio would take three days to liquidate or hedge in normal market conditions. The projected liquidation gains or losses are used to determine the Member's Required Fund Deposit in each Division, which is calculated to cover projected liquidation losses at a 99 percent confidence level. The aggregate of all Members' Required Fund Deposits in each Division constitutes the Division's Clearing Fund, which the Division would be able to access should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to the Division caused by the liquidation of that Member's portfolio.

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[40] *See* Notice, *supra* note 3, at 51250.

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The GSD Rules and MBSD Rules are available at *http://www.dtcc.com/legal/rules-and-procedures.* Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the GSD Rules and MBSD Rules, as applicable.

FICC employs daily backtesting to determine the adequacy of each Member's Required Fund Deposit. FICC compares the Required Fund Deposit[4] for each Member with the simulated liquidation gains/losses using the actual positions in the Member's portfolio, and the actual historical security returns. FICC investigates the cause(s) of any backtesting deficiencies. As a part of this investigation, FICC pays particular attention to Members with backtesting deficiencies that bring the results for that Member below the 99 percent confidence target (*i.e.,* greater than two backtesting deficiency days in a rolling twelve-month period) to determine if there is an identifiable cause of repeat backtesting deficiencies. FICC also evaluates whether multiple Members may experience backtesting deficiencies for the same underlying reason.

While multiple factors may contribute to a Member's backtesting deficiency, FICC has observed that some Members with position increases after the intraday calculation of their Required Fund Deposit may incur backtesting deficiencies due to the additional exposure that is not mitigated until the collection of the Required Fund Deposit on the next Business Day.

B. Calculation of the Backtesting Charge

The objective of the Backtesting Charge is to increase Required Fund Deposits for Members that are likely to experience backtesting deficiencies on the basis described above by an amount sufficient to maintain such Member's backtesting coverage above the 99 percent confidence threshold. Because the settlement activity and size of the backtesting deficiencies varies among impacted Members, FICC must assess a Backtesting Charge that is specific to each impacted Member. To do so, FICC examines each impacted Member's historical backtesting deficiencies observed over the prior 12-month period to identify the three largest backtesting deficiencies that have occurred during that time (for GSD Netting Members only, excluding any backtesting deficiencies attributable to the Blackout Period). The presumptive Backtesting Charge amount equals that Member's third largest historical backtesting deficiency, subject to adjustment as further described below. FICC believes that applying an additional margin charge equal to the third largest historical backtesting deficiency would bring the Member's historically-observed backtesting coverage above the 99 percent target.[5] If assessed, the resulting Backtesting Charge is added to the VaR Charge for such Member determined pursuant to each Division's risk-based margining methodology. The Backtesting Charge is imposed on a daily basis for a one-month period.

This charge is only applicable to those Members whose overall 12-month trailing backtesting coverage falls below the 99 percent coverage target (for GSD Netting Members only, excluding Blackout Period deficiencies).

Although the third largest historical backtesting deficiency for a Member is used as the Backtesting Charge in most cases, each Division retains discretion to adjust the charge amount based on other circumstances that may be relevant for assessing whether an impacted Member is likely to experience future backtesting deficiencies and the estimated size of such deficiencies. Examples of relevant circumstances that would be considered in calculating the final, applicable Backtesting Charge amount include material differences in the three largest backtesting deficiencies observed over the prior 12-month period, variability in the net settlement activity after the collection of the Member's intraday Required Fund Deposit, seasonality in observed backtesting deficiencies and observed market price volatility in excess of the Member's historical VaR Charge(s). Based on FICC's assessment of the impact of these circumstances on the likelihood of, and estimated size of, future backtesting deficiencies for a Member, FICC may, in its discretion, adjust the Backtesting Charge for such Member in an amount that FICC determines to be more appropriate for maintaining such Member's backtesting results above the 99 percent coverage threshold (including a reasonable buffer).

C. Communication With Members and Imposition of the Backtesting Charge

If FICC determines that a Backtesting Charge should apply to a Member that was not assessed a Backtesting Charge during the immediately preceding month or that the Backtesting Charge applied to a Member during the previous month should be increased, the applicable Division will notify the Member on or around the 25th calendar day of the month prior to the assessment of the Backtesting Charge, or prior to the increase to the Backtesting Charge.

Each Division imposes the Backtesting Charge as an additional charge applied to each impacted Member's Required Fund Deposit on a daily basis for a one month period, and reviews each applied Backtesting Charge each month. If an impacted Member's trailing 12-month backtesting coverage exceeds 99 percent (without taking into account historically-imposed Backtesting Charges), the Backtesting Charge is removed.

D. Holidays and the Required Fund Deposit

As described above, FICC determines its Members' Required Fund Deposit amounts in each Division using a risk-based margin methodology that is intended to capture market price risk, assuming that a portfolio would take three days to liquidate or hedge in normal market conditions.

The Holiday Charge may be applied on the Business Day prior to any Holiday. This charge approximates the exposure that a Member's trading activity on the applicable Holiday could pose to the Division. Since the Divisions cannot collect margin on the Holiday, the Holiday Charge is due on the Business Day prior to the applicable Holiday.

E. Calculation and Notification of the Holiday Charge

FICC would determine the appropriate methodology for calculating the Holiday Charge in advance of each applicable Holiday. Potential methodologies for calculating the Holiday Charge include, for example, time scaling of the VaR Charge[6] or application of stress scenarios that cover potential market price risk exposure that may not be appropriately covered by scaling the VaR Charge. FICC would establish a methodology for calculating each Holiday Charge that would take into consideration the market conditions prevailing at that time in order to permit FICC to calculate a Holiday Charge that appropriately estimates the risk that may be presented to FICC on the applicable Holiday, when Members' Required Fund Deposit cannot be collected. The Holiday Charge would represent a percentage increase of the VaR Charge on the Business Day prior to the Holiday, and such percentage increase applies uniformly to all Members. This means that if the Holiday Charge is levied, the same methodology (*i.e.,* formula) is applied to all Members (that is, the Holiday Charge is not a set dollar amount applied to all Members).

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[4] For backtesting comparisons, FICC uses the Required Fund Deposit amount, without regard to the actual collateral posted by the Member.

[5] Each occurrence of a backtesting deficiency reduces a Member's overall backtesting coverage by 0.4 percent (1 exception/250 observation days). Accordingly, an increase equal to the third largest backtesting deficiency would bring backtesting coverage up to 99.2 percent.

Members would be notified of the applicable methodology by an Important Notice issued no later than 10 Business Days prior to the application the Holiday Charge, and the charge is collected on the Business Day prior to the applicable Holiday. The Holiday Charge is removed from the Required Fund Deposit on the Business Day following the Holiday.

Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are within the custody or control of the clearing agency.[7] Rule 17Ad–22(b)(1) under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions, so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.[8] Rule 17Ad–22(b)(2) under the Act requires a clearing agency to maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions.[9]

By incorporating the Backtesting Charge and the Holiday Charge into the GSD Rules and the MBSD Rules, the proposed change addresses exposure that could subject FICC to potential losses under normal market conditions in the event that a Member defaults. Specifically, the proposed change seeks to remedy potential situations that are described above where the Divisions could be undermargined by requiring additional margin. Therefore, FICC believes the proposed rule change enhances the safeguarding of securities and funds that are in the custody or control of FICC, consistent with Section 17(b)(3)(F) of the Act.

The Backtesting Charge is calculated and imposed to cover credit exposures estimated by FICC based on historical backtesting deficiencies with the goal of maintaining each Member's Required Fund Deposit in each Division above the 99 percent coverage threshold. This management of FICC's credit exposures to Members is consistent with Rule 17Ad–22(b)(1) under the Act. Further, the charge is part of the Members' Required Fund Deposits designed to maintain the coverage of credit exposures in each Division at a confidence level of at least 99 percent, which limits FICC's exposures to Members under normal market conditions. The proposed Backtesting Charge seeks to address backtesting deficiencies that could potentially leave the GSD and/or the MBSD undermargined by using the risk-based methodology described above to limit its credit exposure to Members. It therefore is also consistent with Rule 17Ad–22(b)(2) under the Act.

The Holiday Charge is calculated and imposed to cover credit exposures that result from market price moves that occur on a Holiday and are not incorporated in each Member's Required Fund Deposit. This management of FICC's credit exposures to Members is consistent with Rules 17Ad–22(b)(1) and 17Ad–22(b)(2) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that either the Backtesting Charge or the Holiday Charge impose any burden on competition that is not necessary or appropriate.[10] These charges are necessary for FICC to limit its exposure to potential losses from defaults by Members.

The Backtesting Charge is imposed on each Member on an individualized basis in an amount reasonably calculated to maintain its Required Fund Deposit above each Division's 99 percent coverage threshold. FICC employs reasonable methods to calculate and impose an individualized charge in an amount designed to maintain each impacted Member's future backtesting coverage above the 99 percent coverage threshold in each Division, including a reasonable buffer.

Because the market price movements that occur on Holidays are related to the behavior of the market as a whole, the impact of such price movements on FICC's risk is considered general market price risk. Therefore, the Holiday Charge is imposed on all Members on a uniform basis in an amount reasonably calculated to mitigate the market price changes that could occur on a Holiday when the Corporation is closed. The Holiday Charge would represent a percentage increase of the VaR Charge on the Business Day prior to the Holiday, and such percentage increase applies uniformly to all Members in each Division. This means that if the Holiday Charge is levied, the same methodology (*i.e.,* formula) is applied to all Members (that is, the Holiday Charge is not a set dollar amount applied to all Members).

FICC believes, any burden on competition imposed by the addition of these two charges to the GSD Rules and MBSD Rules would be necessary and appropriate to limit FICC's exposures to

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[6] Market price risk and volatility increase with time as there is a greater potential for loss. This additional risk exposure is often approximated by time scaling of volatility by multiplying square root of the additional period of risk (e.g., if the VaR Charge is calibrated to a 3-day risk horizon, an additional day of exposure could be approximated by $\sqrt{4/3}$ * VaR Charge).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(b)(1).

[9] 17 CFR 240.17Ad–22(b)(2).

[10] 15 U.S.C. 78q–1(b)(3)(I).

the risks being mitigated by such charges.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received any written comments relating to this proposal. FICC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2016–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2016–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2016–006 and should be submitted on or before October 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22156 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–32256; 812–14659]

Foreside Advisor Services, LLC, et al.; Notice of Application

September 9, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Foreside Advisor Services, LLC ("FAS"), a Delaware Corporation that will be registered as an investment adviser under the Investment Advisers Act of 1940, Foreside ETF Trust ("Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Foreside Fund Services, LLC ("Distributor"), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on June 6, 2016, and amended on August 26, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 4, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Miller, Senior Counsel, at (202) 551–8707, or Holly Hunter-Ceci, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

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[11] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds ("ETFs").[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions ("Portfolio Instruments"). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order

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[1] Applicants request that the order apply to the new series of the Trust as well as to additional series of the Trust and any other open-end management investment company or series thereof that may be created in the future (each, included in the term "Fund"), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by FAS or an entity controlling, controlled by, or under common control with FAS (each, an "Adviser") and (b) comply with the terms and conditions of the application.

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–22126 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78809; File No. SR–NYSEArca–2016–104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending NYSE Arca Equities Rules 2.16(c) and 2.21(i) Regarding the Timing for Submission of a Uniform Termination Notice for Securities Industry Registration ("Form U5") by an ETP Holder

September 9, 2016.

I. Introduction

On July 14, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend NYSE Arca Equities Rules 2.16, Amendments to ETP Documents, and 2.21, Employees of ETP Holders Registration. The proposed rule change was published for comment in the **Federal Register** on July 27, 2016.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange currently has two different requirements in its rules governing when a Form U5 must be filed: NYSE Arca Equities Rule 2.16(c) requires an ETP Holder to file a Form U5 and any amendment thereto within 30 days of "when a person associated with that ETP Holder terminates their [sic] affiliation with an ETP Holder"; Rule 2.21(i) requires an ETP Holder to file a Form U5 and any amendment thereto within 30 business days of the termination date, "when a person's employment by such ETP Holder terminates."

The Exchange proposed to amend these two rules to make the time frame within which a Form U5 must be submitted the same. As revised, an ETP Holder must promptly file a Form U5 with the Central Registration Depository ("CRD"), but not later than 30 calendar days after the date of termination of a person associated with the ETP Holder or of an employee, as applicable. The proposed rule change also requires that any amendment to a Form U5 be filed promptly with CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. Finally, the proposed rule change requires that all Forms U5 be provided to the terminated person concurrently with filing with CRD. This last requirement is new but is consistent with the rules of other SROs.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and with the objectives of Section 6(b)(5),[7] in particular, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

The Commission notes that the change to Rule 2.21 shortens the time within which the Form U5 must be submitted from 30 business days to 30 calendar days. (The change to Rule 2.16 merely adds "calendar" to modify the number of days. The Exchange made this change so that the two rules would be consistent.) Shortening the time within which a Form U5 must be submitted is important, as the Form U5 must be filed by member firms when they terminate the association of a registered person, or employee. The Form U5 includes the reason for termination of the registered person, which is important when a firm has terminated a registered person for cause. State regulators use the information on Form U5 to determine whether to approve requests by a firm to have an associated person registered in a particular state. Broker-dealer firms review the information on Form U5 when they are deciding whether to hire a registered person. Therefore, the sooner the Form U5 is filed the sooner regulators and broker-dealers will have access to the information. Thus, shortening the time within which a Form U5 must be submitted, so that regulators and broker-dealers can have access to the information sooner, would remove impediments to, and perfect the mechanism of, a free and open market and protect investors and the public interest. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSEArca–2016–104) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22158 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78804; File No. SR–NYSEMKT–2016–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to NYSE MKT Rules 1600 et seq. and the Listing Rules Applicable to the Shares of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund

September 9, 2016.

On May 24, 2016, NYSE MKT LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the listing rules applicable to the shares ("Shares") of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund (collectively, "Funds"), which the Exchange currently lists and trades. The Commission published notice of the proposed rule change in the **Federal Register** on June 13, 2016.[3] On July 28, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 2, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] The Commission received one comment on the proposed rule change.[7] This order institutes proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 78383 (July 21, 2016), 81 FR 49309 ("Notice").

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

I. The Exchange's Description of the Proposal[9]

The Exchange currently lists and trades the Shares pursuant to NYSE MKT Rules 1600 *et seq.* (Trading of Trust Units).[10] To accommodate certain changes to the Funds discussed below, the Exchange proposes to amend NYSE MKT Rules 1600 *et seq.* and certain representations made in support of the listing rules for the Shares upon which the Prior Orders were conditioned.

Currently, the Funds are structured as actively managed closed-end commodity pools. On December 19, 2014, Nuveen Investments, parent company of Nuveen Commodities Asset Management, LLC ("Manager"), announced that it had approved a plan to convert the Funds into open-end exchange-traded products (each such plan, a "Conversion"), which would involve instituting processes for continual creation and redemption of the Shares at net asset value ("NAV") on any business day. At meetings of shareholders in 2015, the shareholders of each Fund approved the Conversions. According to the Exchange, the purpose of the Conversions is to promote the trading of the Funds' Shares at prices equal to or near their NAV.[11]

A. Amendments to NYSE MKT Rules 1600 et seq.

Under NYSE MKT Rule 1600, a Trust Unit is a security that is issued by a trust ("Trust"), or other similar entity, that is constituted as a commodity pool and holds investments comprising, or otherwise based on, any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, and/or commodities. The Exchange proposes to amend Rules 1600 *et seq.* in several respects.

Among other things, the Exchange proposes to amend its Rule 1600(b)(ii) by: (1) Allowing Trusts to invest in securities; and (2) providing that Trust Units be issued and redeemed continuously in specified aggregate amounts at the next determined NAV. The Exchange also proposes to amend Rule 1602(a)(ii) to provide that the Exchange will obtain a representation from the issuer of each series of Trust Units that the NAV and the "Disclosed Portfolio"[12] will be made available to all market participants at the same time. Further, the Exchange proposes to amend Rule 1602(b)(ii) to provide that, if the Exchange becomes aware that the Disclosed Portfolio or NAV per share with respect to a series of Trust Units is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the Disclosed Portfolio or NAV per share is available to all market participants.

The Exchange also proposes to provide in Rule 1602(b)(iii) that each series of Trust Units will be listed or traded subject to application of the following criteria: (1) The "Intraday Indicative Value" for shares[13] will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Units trade on the Exchange; (2) the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time; and (3) the "Reporting Authority" that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[14]

Moreover, the Exchange proposes in Commentary .04 to Rule 1600 that, if a Trust's advisor is affiliated with a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. Personnel who make decisions on the Trust's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable portfolio.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78000 (June 7, 2016), 81 FR 38232.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78432, 81 FR 51248 (August 3, 2016). The Commission designated September 9, 2016, as the date by which the Commission would either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange amended Commentary .01 to Exchange Rule 1602 to add the following new text: (1) All statements and representations contained in such proposal regarding (a) the description of the portfolio holdings, (b) limitations on portfolio holdings, or (c) the applicability of Exchange rules and surveillance procedures shall be complied with on a continuing basis and the issuer of such issue of Trust Units shall notify the Exchange of any material noncompliance with such statements and representations; and (2) the Exchange will consider the suspension of trading and delisting (if applicable) of an issue of Trust Units under Sections 1001 through 1010 of the NYSE MKT Company Guide if the issuer of such security notifies the Exchange of an event of material noncompliance. Amendment No. 1 is available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/rule-filings/filings/2016/NYSEMKT-2016-58.pdf.*

[7] *See* comment letter dated July 4, 2016, available at: *https://www.sec.gov/comments/sr-nysemkt-2016-58/nysemkt201658-1.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] For additional information regarding, among other things, the Funds, the Shares, investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of net asset value, distributions, taxes, *see* Amendment No. 1, *supra* note 6; Pre-Effective Amendment No. 1 to the registration statement on Form S–3 (File No. 333–205590), filed on November 30, 2015 (the Diversified Fund); and Pre-Effective Amendment No. 1 to the registration statement on Form S–3 (File No. 333–205587), filed on November 30, 2015 (the Long/Short Fund).

[10] *See* also Securities Exchange Act Release No. 61807 (March 31, 2010), 75 FR 17818 (April 7, 2010) (SR–NYSEAmex–2010–09) (order approving listing and trading of shares of the Nuveen Diversified Commodity Fund) ("Prior Diversified Order"); and Securities Exchange Act Release No 67223 (June 20, 2012) (SR–NYSEAmex–2012–24) (order approving listing and trading of shares of the Nuveen Long/Short Commodity Total Return Fund) ("Prior Long/Short Order" and, together with the Prior Diversified Order, "Prior Orders"). The Exchange was formerly known as NYSE Amex LLC.

[11] Since the Conversion Plan Announcement, each Fund has traded at a reduced discount to NAV: from December 18, 2014, to March 9, 2016, the discount to NAV has been reduced for the Diversified Fund from 18.02% to 5.11% and for the Long/Short Fund from 19.80% to 3.75%. *See* Amendment No. 1, *supra* note 6, at 5, n.5.

[12] "Disclosed Portfolio" is defined as the identities and quantities of the assets held by a Trust that will form the basis for that Trust's calculation of the NAV at the end of the business day. *See* proposed NYSE MKT Rule 1600(b)(iii).

[13] "Intraday Indicative Value" is defined as the estimated indicative value of a Trust Unit based on current information regarding the value of the assets in the Disclosed Portfolio. *See* proposed Rule 1600(b)(iv).

[14] Proposed Rule 1600(b)(v) defines "Reporting Authority" as, in respect of a particular series of Trust Units, the Exchange, an institution, or a reporting or information service designated by the Trust or the Exchange or by the exchange that lists a particular series of Trust Units (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, (i) the Intraday Indicative Value, (ii) the Disclosed Portfolio, (iii) the amount of any cash distribution to holders of Trust Units, (iv) NAV, and (v) other information relating to the issuance, redemption, or trading of Trust Units. A series of Trust Units may have more than one Reporting Authority, each having different functions.

B. Descriptions of the Funds

Each Fund currently is a commodity pool managed by the Manager. The Manager is a Delaware limited liability company that is registered as a commodity pool operator ("CPO") with the Commodity Futures Trading Commission ("CFTC"). The Manager is a wholly-owned subsidiary of Nuveen Investments, Inc. ("Nuveen Investments"). The Manager is responsible for determining the Funds' overall investment strategies and overseeing their implementation. The Manager also manages the Funds' business affairs and provides certain legal, accounting, and other administrative services.

Gresham Investment Management LLC ("Commodity Subadviser"), an affiliate of the Manager, manages each Fund's commodity futures investment strategy. The Commodity Subadviser is a Delaware limited liability company and is registered with the CFTC as a commodity trading advisor and as a CPO and is a member of the National Futures Association. Additionally, the Commodity Subadviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act").

Nuveen Asset Management, LLC ("Collateral Subadviser" and, together with the Commodity Subadviser, the "Subadvisers"), an affiliate of the Manager, manages each Fund's investments in U.S. government securities, other short-term, high grade fixed income securities, and cash equivalents ("collateral"). The Collateral Subadviser is registered with the Commission as an investment adviser under the Advisers Act.

State Street Bank and Trust Company serves as transfer agent, registrar for the Shares, and custodian and administrator of the assets of each Fund, pursuant to which it performs NAV calculations, accounting and other fund administrative services. After the Conversions, it also will receive and process orders from Authorized Participants to create and redeem Shares of each Fund.

C. Post-Conversion Changes and Amended Representations Regarding the Funds

At the time of the Conversions, the Shares would be assigned new CUSIP numbers, and the name of the Funds would change: The name of the Diversified Fund would change to the NuShares Gresham Adaptive Commodity ETF, and the name of the Long/Short Fund would change to the NuShares Gresham Long/Short Commodity ETF. Currently, the Funds are not investment companies within the meaning of the Investment Company Act of 1940, as amended ("Investment Company Act"), and they would not become investment companies after the Conversions. The Manager would announce in advance the expected effective date of the Conversions via press releases and Form 8–K filings. Those press releases would include a summary of changes to the Funds that would occur in connection with the Conversions. The Exchange also would issue a notice to members approximately 10 days prior to the date of effectiveness of the Conversion, and another notice to members on the business day prior to the date Shares would trade under the new CUSIP.

In connection with the Conversions, the Manager intends to implement additional changes to both Funds that the Manager believes will better align the Funds' features with their newly-adopted ETP structure. The charts below summarize those changes.

Before conversion	After conversion
Changes to Diversified Fund	
Fund name:	
Nuveen Diversified Commodity Fund	NuShares Gresham Adaptive Commodity ETF.
Ticker:	
CFD	GAC.
Distribution Policy:	
Pays regular monthly distributions	Discontinue regular monthly Distributions.
Share Repurchases:	
Active share repurchase program	Discontinue share repurchase Program.
Investment Strategy:	
Long-only commodity strategy	Long-biased commodity strategy-weightings determined on a monthly basis; if the price of a commodity contract is higher than its six-month simple moving average, the commodity contract will be held at its target weight; conversely, if the price is below the six-month simple moving average, the commodity weight will be reduced by half.
Invest in forwards	No longer invest in forwards.
Option writing program	Discontinue option writing program.
Collateral invested in cash equivalents, U.S. government securities and other short-term high-grade debt securities, including corporate debt, with terms not exceeding one year.	Collateral invested in U.S. government securities, with terms not exceeding one year, and cash equivalents.
Changes to Long/Short Fund	
Fund name:	
Nuveen Long/Short Commodity Total Return Fund	NuShares Gresham Long/Short Commodity ETF.
Ticker:	
CTF	GLS.
Distribution Policy:	
Pays regular monthly distributions	Discontinue regular monthly distributions.
Share Repurchases:	

Before conversion	After conversion
Active share repurchase Program	Discontinue share repurchase Program.
Investment Strategy:	
Long/short commodity futures strategy based on the Morningstar Long/Short Commodity Index.	Long/short commodity futures strategy based on the Gresham Long/Short Commodity Index.
Uses momentum-based model to calculate 12-month moving price averages that are used to determine whether a commodity futures position is held long or short.	Long/short commodity strategy—Momentum-based model will employ shorter-term moving averages (such as 6-months) to determine whether a commodity futures position in the Index is held long or short (or flat, for petroleum-related commodities). Weightings are determined on a monthly basis; if the price of a commodity contract is higher than its six-month simple moving average, the commodity is assigned a long position; conversely, if the price is below the six-month simple moving average, it is assigned a short position.
Will not short *energy* futures—if model signals to short energy futures, positions will instead be held "flat" (*i.e.*, in cash).	Will not short *petroleum*-based futures—if model signals to short petroleum-based futures, positions will instead be held "flat" (*i.e.*, in cash).
Invest in forwards	No longer invest in forwards.
Option writing program	Discontinue option writing program.
Collateral invested in cash equivalents, U.S. government securities and other short-term high-grade debt securities, including corporate debt, with terms not exceeding one year.	Collateral invested in short-term U.S. government securities and cash equivalents.

After the Conversions, each Fund's principal investments are not expected to change. Under normal market conditions,[15] each Fund will continue to invest in (i) commodity futures contracts that provide exposure to the global commodity markets ("Commodity Futures") listed on U.S. and non-U.S. futures exchanges [16] having various expiration dates, and (ii) collateral consisting of U.S. government securities and cash equivalents, some of which are maintained on deposit with a Fund's commodity broker as margin, to collateralize a Fund's positions in the Commodity Futures. Moreover, as stated above, the Funds will not invest in forwards or options following the Conversions. In addition, each Fund's Commodity Futures investments will, at all times, be fully collateralized (*i.e.*, the "notional value"—the value of the underlying commodity at the contract's spot price—of the Fund's commodity exposure will not exceed the market value of the Fund's net assets).

Whereas in support of the Prior Orders the Exchange represented that 25% of each Fund's collateral will be committed as "initial" and "variation" margin, the Funds now represent that, following the Conversions, approximately 10–25% of each Fund's collateral would be committed as initial and variation margin and be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, to secure the futures contract positions.[17] The remaining 75–90% of a Fund's collateral (as opposed to a set 75%, as represented in support of the Prior Orders) would continue be held in a separate collateral investment account managed by the Collateral Subadviser. The eligible collateral investments would also change following the Conversion—the Funds would no longer invest in money market funds or repurchase agreements. Instead, they would invest in short-term U.S. government securities and cash equivalents.

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEMKT–2016–58 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [18] to determine whether the proposed rule change, as modified by Amendment No. 1 should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[19] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for the submission of additional analysis regarding the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." [20]

The pre-existing Shares after the Conversions would not be deemed new securities but would continue to trade on the Exchange without interruption. As discussed above, the Exchange states that: (1) Ahead of the Conversions, the Manager would announce via press releases and Form 8–K filings the expected effective date of the Conversions; (2) those press releases would include a summary of changes to the Funds that would occur in connection with the Conversions; (3) NYSE MKT would issue a notice to members approximately 10 days prior to the date of effectiveness of the

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[15] With respect to each Fund, the term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as a systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[16] Each Fund would make investments in Commodity Futures in agriculture, energy, foods and fibers, industrial metals, livestock, and precious metals, and would take positions in Commodity Futures related to approximately 30 commodities. Each Fund would continue to allocate its investments to Commodity Futures pursuant to the Commodity Subadviser's proprietary strategy. *See* Amendment No. 1, *supra* note 6, at 17. Not more than 10% of the net assets of a Fund, in the aggregate, shall consist of futures contracts whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* Amendment No. 1, *supra* note 6, at 15, n.17.

[17] Those assets would be held in a commodity futures account maintained by SG Americas Securities, LLC, the Funds' clearing broker, which serves as a futures commission merchant and broker-dealer registered with the CFTC and the Commission.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] *Id.*

[20] 15 U.S.C. 78f(b)(5).

Conversion, and another notice to members on the business day prior to the date Shares would trade under the new CUSIP. Because the Shares will continue to be listed and traded on the Exchange without interruption as the Funds transition from a closed-end to an open-end structure, the Commission seeks comment on whether the Exchange's proposal is designed to sufficiently ensure that the trading of the Shares during the Conversions will be orderly and without undue market confusion or disruption.

Separately, the Exchange proposes to amend Commentary .01 to its Rule 1602, which pertains to initial and continued listing requirements for Trust Units, to provide that "the issuer of [an] issue of Trust Units shall notify the Exchange of any *material* noncompliance with [any] statements and representations" and that "the Exchange will *consider* suspending trading in and, if applicable, delisting of, an issue of Trust Units if the issuer of such security notifies the Exchange of *material* noncompliance" (emphasis added). The Commission believes that it is critical that listed issues, including those of exchange traded products such as the Funds, comply with exchange listing standards on an ongoing basis and that listing exchanges rigorously enforce those rules. Accordingly, the Commission, seeks comment on whether the Exchange's proposed amendment to Commentary .01 that proposes to "consider" suspension and delisting only for "material" noncompliance of the Exchange's listing standards is consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[21]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 6, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 20, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEMKT–2016–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–58 and should be submitted on or before October 6, 2016. Rebuttal comments should be submitted by October 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22153 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32255; 812–14665]

Dhandho ETF Trust and Dhandho Funds LLC; Notice of Application

September 9, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

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[21] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[22] 17 CFR 200.30–3(a)(57).

APPLICANTS: Dhandho Funds LLC ("Initial Adviser"), a Delaware Corporation that will be registered as an investment adviser under the Investment Advisers Act of 1940, and Dhandho ETF Trust ("Trust"), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series.

FILING DATES: The application was filed on June 23, 2016, and amended on August 2, 2016 and August 31, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 4, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Banco Popular Building, 206 Tetuan Street, Suite 703, San Juan, PR 00902.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Miller, Senior Counsel, at (202) 551–8707, or Holly Hunter-Ceci, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") (together with any future distributor, the "Distributor"). Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii)

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[1] Applicants request that the order apply to the Trust's initial index-based ETF series, as well as any additional series of the Trust, and any other open-end management investment company or existing or future series thereof that may be created in the future (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an "Adviser") and (b) comply with the terms and conditions of the application.

[2] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–22125 Filed 9–14–16; 8:45 am]

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[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78799; File No. SR–BatsEDGA–2016–21]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.21(b) Regarding the Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

September 9, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2016, Bats EDGA Exchange, Inc. ("Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Exchange Rule 11.21(b) regarding the data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, the Exchange, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder,[7] the Plan to Implement a Tick Size Pilot Program (the "Plan").[8] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[9] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[9] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[13] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[14] will apply to the Trade-at requirement.

The Plan also requires a Trading Center[15] or a Market Maker[16] to collect and transmit certain data to its designated examining authority ("DEA"), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid and National Best Offer quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[17] On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.[18] As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

On March 16, 2016, the Exchange filed with the Commission a proposed rule change to adopt Exchange Rule 11.21(b) to implement the data collection requirements of the Plan.[19] On December 9, 2015, FINRA, on behalf of the Plan Participants, submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.[20]

The Exchange now proposes to further amend Rule 11.21(b) to modify additional data collection and reporting requirements.[21] First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. The Exchange and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, *i.e.,* without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. The Exchange, therefore, proposes to modify Supplementary Material [sic].04 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. The Exchange and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than $0.10 away from the NBBO for purposes of Appendix B reporting. The Exchange therefore proposes to amend Supplementary Material [sic].06 to provide that limit orders priced more than $0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and The Exchange and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

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[11] *See* Section VI(B) of the Plan.

[12] *See* Section VI(C) of the Plan.

[13] *See* Section VI(D) of the Plan.

[14] 17 CFR 242.611.

[15] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[16] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[17] *See* Approval Order at 27533 and 27545.

[18] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4–657).

[19] *See* Securities Exchange Act Release No. 77417 (March 22, 2016), 81 FR 17219 (March 28, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–BatsEDGA–2016–01).

The Exchange also submitted a proposed rule change to implement the quoting and trading requirements of the Plan. *See* Securities Exchange Act Release No. 77792 (May 10, 2016), 81 FR 30397 (May 16, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–BatsEDGA–2016–08).

[20] *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted the Exchange a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, the Exchange, dated March 22, 2016 ("Exemption Letter").

[21] The Exchange notes that, in connection with this proposed rule change, FINRA, on behalf of the Plan Participants, intends to file an exemptive request seeking relief from certain of the Plan's data collection requirements.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within $0.10 of the NBBO) (14). The Exchange and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are "resting." The Exchange, therefore, proposes to amend Supplementary Material [sic].06 to make this change.

In the fourth change, the Exchange proposes to add new Supplementary Material [sic].09 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. The Exchange and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. The Exchange is therefore proposing this change as part of Supplementary Material [sic].09. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. The Exchange and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and the Exchange is therefore proposing this change as part of Supplementary Material [sic].09.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the National Best Bid or National Best Offer (NBBO) at the time of or immediately before the trade for both share and trade participation calculations. The Exchange and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. The Exchange therefore proposes to make this change as part of Supplementary Material [sic].09.

Finally, the Exchange proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Supplementary Material [sic].10 provides that Pre-Pilot Data Collection Securities are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Exchange and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. According, the Exchange is revising Supplementary Material [sic].10 (which will be re-numbered as Supplementary Material [sic].11) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.[22]

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness. The Exchange has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[23] in general, and furthers the objectives of section 6(b)(5) of the Act[24] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how the Exchange and Participants that operate Trading Centers collect and report data. The

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[22] After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. The Exchange and the other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period—*i.e.,* September 3, 2016—the Exchange and the Exchange members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using the Exchange's published Pre-Pilot Data Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

Exchange notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and Exchange Rule 11.21(b). In addition, the proposed rule change applies equally to all similarly situated members. Therefore, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[25] and Rule 19b–4(f)(6)[26] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6)[27] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[28] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that so that the proposed rule change can become operative on August 30, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[30]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGA–2016–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–21 and should be submitted on or before October 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22148 Filed 9–14–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78803; File No. SR–NYSEMKT–2016–83]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 67—Equities Relating to the Tick Size Pilot Program

September 9, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 25, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 67—Equities to (1) describe system functionality requirements necessary to implement the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS[4] under the Act ("Plan"), and (2) clarify the operation of certain exceptions to the Trade-at

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[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(3)(C).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.608.

Prohibition [5] on Pilot Securities in the third test group. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 67—Equities ("Rule 67") to (1) describe system functionality requirements necessary to implement the Plan [6] and (2) clarify the operation of certain exceptions to the Trade-at Prohibition [7] on Pilot Securities in the third test group ("Test Group Three").[8]

The Plan is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies and is currently scheduled to begin on October 3, 2016. Rule 67, adopted earlier this year to implement the quoting and trading requirements of the Plan, will be in effect on a two-year pilot period that coincides with pilot period for the Plan.

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. (f/k/a EDGA Exchange, Inc.), Bats EDGX Exchange, Inc. (f/k/a EDGX Exchange, Inc.), the Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE Arca, Inc., and the Exchange (collectively "Participants"), filed the Plan with the Commission, pursuant to Section 11A of the Act [9] and Rule 608 of Regulation NMS thereunder.[10] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[11] The Plan was published for comment in the **Federal Register** on November 7, 2014,[12] and approved by the Commission, as modified, on May 6, 2015.[13]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Tick Size Pilot Program will enable the Commission to assess whether wider tick sizes would enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Tick Size Pilot Program will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Tick Pilot Program will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[14]

During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[15] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[16] Pilot Securities in Test Group Three will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid or "Best Protected Offer," unless an enumerated exception applies.[17] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS ("Rule 611") [18] will apply to the Trade-at requirement.

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraphs (a) and (c)–(e) of Rule 67 to require member organizations to comply with the quoting and trading provisions of the Plan.[19] The Exchange also adopted paragraph (b) of Rule 67 to require member organizations to comply with the data collection provisions under Appendix B and C of the Plan.[20]

Trade-At Intermarket Sweep Orders

The Plan defines a Trade-at Intermarket Sweep Order ("ISO") as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs.[21]

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[5] Rule 67(e)(4)(A)—Equities defines the "Trade-at Prohibition" to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours. Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[6] *See* Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4–657) ("Tick Plan Approval Order"). *See,* also, Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4–657), 80 FR 70284 (File No. 4–657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016. The Plan was submitted to the Commission pursuant to Rule 608 of Regulation NMS. 17 CFR 242.608.

[7] *See* note 5, *supra.*

[8] *See infra* notes 14–17 and accompanying text for a description of Test Group Three.

[9] 15 U.S.C. 78k–1.

[10] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[11] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[12] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[13] *See* Tick Plan Approval Order, *supra* note 6. *See also* Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), amending the Plan to add National Stock Exchange, Inc. as a Participant.

[14] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[15] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[16] *See* Section VI(C) of the Plan.

[17] *See* Section VI(D) of the Plan.

[18] 17 CFR 242.611.

[19] *See,* Securities Exchange Act Release No. 77949 (May 31, 2016), 81 FR 36367 (June 6, 2016) (SR–NYSEMKT–2016–56) ("Quoting & Trading Rules Proposal").

[20] *See* Securities Exchange Act Release No. 77478 (March 30, 2016), 81 FR 19665 (April 5, 2016) (SR–NYSEMKT–2016–40).

The Exchange clarified the use of an ISO in connection with the "Trade-at" requirement in Test Group Three by adopting a comprehensive definition of "Trade-at ISO" under Rule 67(a)(1)(D).[22] The Exchange now proposes to further clarify that, when a Trade-at ISO is routed to a Trading Center, when simultaneously routing additional limit orders to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, such additional limit orders can be routed as either Trade-at ISOs or ISOs. Therefore, the Exchange is proposing to distinguish Trade-at ISOs from ISOs by adding the phrase "or Intermarket Sweep Orders" to the end of Rule 67(a)(1)(D)(ii), so that any such additional routed orders sent to execute against the Trade-at ISO limit order would need to be marked as either Trade-at ISOs or ISOs.

Likewise, the Exchange is proposing to amend Rule 67(e)(4)(C)(x) to add the phrase "or Intermarket Sweep Orders" into the Trade-at ISO exemption to the Trade-at Prohibition, to clarify that a Trading Center can simultaneously route Trade-at ISOs or ISOs to execute against the full displayed size of the Protected Quotation that was traded at.

Block Size Exemption to Trade-At Prohibition

The Plan defines Block Size as an order (1) of at least 5,000 shares, or (2) for a quantity of stock having a market value of at least $100,000. The Block Size exception to the Trade-at Prohibition permits a Trading Center to immediately execute a Block size order against displayed and undisplayed liquidity at a price equal to the National Best Bid or National Best Offer, as applicable, without satisfying all Protected Quotations at the National Best Bid or National Best Offer, as applicable.[23]

The Exchange proposes to amend Rule 67(e)(4)(C)(iii) to clarify how the Block Size exception to the Trade-at Prohibition would operate under the requirements of the Plan. The Exchange proposes to delete subparagraph (C) of Rule 67(e)(4)(C)(iii), which state that, to qualify for the Block Size exception, an order may not be executed on multiple Trading Centers. By deleting this requirement, the Block Size exception to the Trade At Prohibition would apply to an order received by a market that has sufficient liquidity to execute such Block Size, irrespective of whether the receiving market routes a portion of the Block Size order to another Trading Center to comply with Rule 611 or Regulation NMS. Any routed interest that returns unexecuted may be immediately executed under the same Block Size exception, provided such interest remains marketable.

Proposed Amendments to Rule 67 for Tick-Pilot Specific System Changes

The Exchange proposes to add paragraph (f) of Rule 67 to describe changes to system functionality necessary to implement the Plan. Paragraph (f) of Rule 67 would set forth the Exchange's specific procedures for handling, executing, re-pricing and displaying certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two, and Three.

In determining the scope of these proposed changes to implement the Plan, the Exchange reviewed its order types and identified which orders and instructions would be inconsistent with the Plan and propose to modify the operation of such order types so they will comply with the Plan, or, to the extent inconsistent with the Plan, eliminate them. These proposed changes are designed to comply with the Plan and to allow the Exchange to meet its regulatory obligations under the Plan.

As part of this review, the Exchange identified order types that were designed to comply with the requirements of Regulation NMS. Among other things, Regulation NMS requires a trading center to have policies and procedures to reasonably avoid displaying quotations that lock or cross any protected quotation[24] and to prevent trade-throughs in NMS stocks that do not fall within an exception enumerated in Rule 611(b) to Regulation NMS.[25] As such, under Regulation NMS, an exchange may rank undisplayed orders at the price of a protected quotation on an away market and execute such non-displayed orders at the price of a protected quotation on an away market. By contrast, in Test Group Three, an undisplayed order may not trade at the price of a protected quotation on an away market. Accordingly, as described below, in order to comply with the Plan for Test Group Three securities, the Exchange is proposing to modify the behavior of specified orders that are currently permitted to trade undisplayed at the price of the PBBO or NBBO.

As described in greater detail below, the Exchange is also proposing to reject specified orders in Pilot Securities in Test Group Three because the operation of such order types are, by their terms, inconsistent with the requirements of the Trade At Prohibition.

Proposed Rule 67(f)(1)—Trade-At Intermarket Sweep Orders

Proposed Rule 67(f)(1) would describe the handling of Trade-at Intermarket Sweep Orders ("TA ISO") on the Exchange. As described above, the requirements for a member organization that enters a TA ISO are specified in Rule 67(a)(1)(D)(ii) and differ from the requirements for a member organization that enters an IOC ISO (as specified in Rule 13(e)(3)(A)—Equities). However, the Exchange will handle a TA ISO the same way it handles an IOC ISO in all securities.

As proposed in Rule 67(f)(1)(A), the Exchange would accept TA ISOs in all securities. Further, TA ISOs must be designated as IOC, may include a minimum trade size, and do not route. These requirements are based on existing IOC functionality, as specified in Rule 13(b)(2)—Equities governing IOC Modifiers.

In addition, proposed Rule 67(f)(1)(B) would provide that the Exchange would immediately and automatically execute a TA ISO against the displayed and non-displayed bid (offer) up to its full size in accordance with and to the extent provided by Exchange Rules 1000—Equities–1004—Equities and will then sweep the Exchange's book as provided in Rule 1000(d)(iii)—Equities. Any portion of the TA ISO that is not executed would be immediately and automatically cancelled. This proposed rule text is based on current Rule 13(e)(3)(B)—Equities.

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[21] *See* Plan, Section I(MM).

[22] Rule 67(a)(1)(D) defines Trade-at ISO to mean a limit order for a Pilot Security that meets the following requirements:

(i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

(ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

[23] *See* Plan, Section VI(D).

[24] *See* 17 CFR 242.610(d).

[25] *See* 17 CFR 242.611(b).

As with Limit Orders designated IOC, proposed Rule 67(f)(1)(C) would provide that TA ISOs would be accepted before the Exchange opens and would be eligible to participate in the opening transaction at its limit price, but would not be accepted during a trading halt or pause for participation in a reopening transaction. This proposed rule text is based on current Rule 13(b)(2)(D)—Equities governing IOC Order participation in the opening transaction.

As noted, TA ISOs would not be accepted during a trading halt or pause of participation in a reopening transaction, which represents a change from the way the Exchange currently handles NYSE IOC Orders, which are also Limit Orders designated IOC.[26] Currently, NYSE IOC Orders received during a trading halt are held for participation in the reopening trade and, if not executed as part of the reopening trade, are fully or partially cancelled.[27]

Finally, proposed Rule 67(f)(1)(D) would provide that TA ISOs may not be entered as e-Quotes, d-Quotes, or g-Quotes. This proposed rule text is based on current Rule 70(a)(i)—Equities, which provides that Floor broker agency interest files (*i.e.*, e-Quotes, d-Quotes, and g-Quotes) do not include ISOs.

Proposed Rule 67(f)(2)—Pilot Securities in Test Groups One, Two, and Three

Proposed Rule 67(f)(2) would describe the procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two and Three.

- Proposed Rule 67(f)(2)(A) would provide that references in Exchange rules to the minimum price variation ("MPV"), as defined in Supplementary Material .10 to Rule 62—Equities, would instead mean the quoting minimum price variation specified in paragraphs (c), (d), and (e) of this Rule. This proposed rule text promotes transparency in Exchange rules to be clear that if a rule specifies that an order will be priced based off of the MPV, for Pilot Securities in Test Groups One, Two, and Three, the applicable MPV will be the quoting MPV required by the Plan.[28] For example, Rule 13(e)(1)(B)—Equities provides that if a Limit Order designated with an Add Liquidity Only ("ALO") modifier is marketable against Exchange interest or would lock or cross a protected quotation in violation of Rule 610(d) of Regulation NMS, the order will be re-priced and displayed one MPV, as defined in Supplementary Material .10 to Rule 62—Equities, below the best-priced sell interest (for bids) or above the best-priced buy interest (for offers). As provided for in proposed Rule 67(f)(2)(A), on arrival, the MPV applicable for Limit Orders designated ALO in Test Groups One, Two, and Three would be $0.05.
- Consistent with the Plan, proposed Rule 67(f)(2)(B) would provide that pre-opening indications, as defined in Rule 15(a)—Equities,[29] would be published in $0.05 pricing increments for Pilot Securities in Test Groups One, Two, and Three.
- Proposed Rule 67(f)(2)(C) would provide that Mid-Point Passive Liquidity ("MPL") Orders, which are undisplayed limit orders that automatically execute at the mid-point of the protected best bid ("PBB") and the protected best offer ("PBO"),[30] must be entered with a limit price in a $0.05 pricing increment consistent with the Plan. While MPL Orders in all Test Groups would be eligible to trade at the midpoint of the PBBO, which may not be in a $0.05 pricing increment, the Exchange proposes that the limit price specified for such orders must be in the quoting MPV for Test Groups One, Two, and Three.
- Proposed Rule 67(f)(2)(D) would clarify that trading collars that are not in the trading MPV for the security would be moved to the nearest price in the trading MPV for that security. Trading collars applicable to incoming Market Orders and marketable Limit Orders are specified in Rule 1000(c). As specified in that rule, Trade Collars are calculated as a specified percentage above the NBO (for buy orders) or below the NBB (for sell orders). As described in greater detail below, if the application of the percentage against the NBBO results in a price that is not in the applicable MPV, the Exchange will round the result down to the nearest MPV. For Pilot Securities in Test Groups One and Two, because the trading MPV is $0.01, the Exchange will use the $0.01 MPV when rounding down the Trading Collar. For Pilot Securities in Test Group Three, the Exchange will use the $0.05 MPV when rounding down the Trading Collar.

Proposed Rule 67(f)(3)—Pilot Securities in Test Groups Two and Three

Proposed Rule 67(f)(3) would specify procedures for handling, executing, and re-pricing of Retail Price Improvement Orders ("RPI") applicable to Pilot Securities in Test Groups Two and Three. An RPI is a non-displayed order that is priced better than the best protected bid or offer ("PBBO") utilized by Retail Liquidity Providers ("RLPs") and non-RLP member organizations to provide potential price improvement to retail investor orders.[31] Consistent with the requirements of the Plan, which requires a minimum of $0.005 price improvement in retail programs in Test Groups Two and Three instead of the $0.001 price improvement specified in Rule 107C—Equities, proposed Rule 67(f)(3) would provide that RPIs must be entered with a limit price and an offset in a $0.005 increment.

Proposed Rule 67(f)(4)—Pilot Securities in Test Group Three

Proposed Rule 67(f)(4) would specify procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Group Three. The proposed changes to order behavior for Pilot Securities in Test Group Three are designed to comply with the Trade-at prohibition by changing the ranking of orders that trade at non-displayed prices unless the execution is eligible for an exception.

- Under Rule 72(c)(i)—Equities, an automatically executing order will trade first with any unexecuted Market Orders, allocated on time priority, and then with displayable bids (offers). If there is insufficient displayable volume to fill the order, an automatically executing order will trade next with non-displayable interest on parity. The Exchange proposes to modify these requirements for Pilot Securities in Test Group Three. Under proposed Rule 67(f)(4)(A), an incoming automatically executing order to sell (buy) will trade with displayable bids (offers) and route to protected bids (offers) before trading with an unexecuted Market Order held undisplayed at the same price. Further, proposed Rule 67(f)(4)(A) would provide that, after trading or routing, or both, any remaining balance of such an incoming automatically executing order would satisfy any unexecuted Market Orders in time priority before trading with non-displayable interest on parity. As such, proposed Rule 67(f)(4)(A) would specify the ranking of orders for Pilot Securities in Test Group Three and is designed to assure that non-displayed orders, including unexecuted Market Orders, will not price match protected quotations. Instead, the Exchange will either route or cancel an incoming order, consistent with the order's instructions, before trading with either unexecuted Market Orders or non-displayed orders.[32]

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[26] NYSE IOC Orders automatically execute against the displayed quotation up to its full size and sweep the Exchange book, as provided in Rule 1000—Equities to the extent possible, with portions of the order routed to other markets if necessary. *See* Rule 13(b)(2)(B)—Equities.

[27] *See* Rule 13(b)(2)(E)—Equities.

[28] *See, e.g.,* Rules 13(a)(1)(A)(iv)—Equities, 13(e)(1)(B)—Equities, and 13(e)(3)(C)(ii)—Equities.

[29] Rule 15(a)—Equities provides that pre-opening indications will include the security and the price range within which the opening price is anticipated to occur and will be published via the securities information processor and proprietary data feeds.

[30] *See* Rule 13(d)(1)(A)—Equities.

[31] *See* Rule 107C—Equities. In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis. *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) ("RLP Approval Order") (SR–NYSEAmex–2011–84). *See also* Securities Exchange Act Release No. 78602 (August 17, 2016), 81 FR 57639 (August 23, 2016) (SR–NYSEMKT–2016–76) (extending pilot to December 31, 2016). The Exchange established the Program to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. *See* RLP Approval Order, 77 FR at 40674.

- Proposed Rule 67(f)(4)(B) would set forth the trading restrictions applicable to ISOs in Test Group Three.
  - Proposed Rule 67(f)(4)(B)(i) would provide that, on entry, Day ISOs would be eligible for the Trade-at ISO exception set forth in proposed Rule 67(e)(4)(C)(x). Because a member organization that enters a Day ISO to buy (sell) must simultaneously route one or more limit orders to execute against the full displayed size of any protected offer (bid), a member organization entering a Day ISO would have met the obligations specified in Rule 67(e)(4)(C)(x). Accordingly, proposed Rule 67(f)(4)(B)(i) would provide that on entry, Day ISOs would be eligible for the exception set forth in Rule 67(e)(4)(C)(x).
  - Proposed Rule 67(f)(4)(B)(ii) would provide that an IOC ISO to buy (sell) would not trade with non-displayed interest to sell (buy) that is the same price as a protected offer (bid) unless the limit price of such IOC ISO is higher (lower) than the price of the protected offer (bid). As such, an arriving IOC ISO would be permitted to trade with undisplayed orders resting on the NYSE order book only if the limit price of the arriving IOC ISO order is better than the PBBO. This would be permitted under the Trade-at Prohibition because to enter an IOC ISO to buy (sell) at a price higher (lower) than PBO (PBB), the entering firm would have been required to simultaneously route limit orders to execute against the full size of the PBO (PBB).
- Proposed Rule 67(f)(4)(C) would set forth the restrictions applicable to resting non-displayed interest, *i.e.,* a resting order to buy (sell) that is not displayed at the price at which it is eligible to trade. Resting non-displayed interest on the Exchange could include Non-Display Reserve Orders,[33] Non-Display Reserve e-Quotes,[34] the reserve interest of Minimum Display Reserve Orders and Minimum Display Reserve e-Quotes,[35] and pegging interest that is not displayed.[36] The proposed rule changes are designed to assure that these orders would not price match a protected quotation.
  - Proposed Rule 67(f)(4)(C)(i) would provide that resting non-displayed interest to buy (sell) would not trade at the price of a protected offer (bid).
  - Proposed Rule 67(f)(4)(C)(ii) would provide that resting non-displayed interest to buy (sell) would not trade at the price of a protected bid (offer) unless the incoming order to sell (buy) is a TA ISO, Day ISO, or IOC ISO that has a limit price lower (higher) than the price of the non-displayed interest. In such case, the arriving TA ISO, Day ISO, or IOC ISO would be eligible to trade with resting contra-side non-displayed interest that is priced equal to a same-side protected quote because the entering firm would have met its obligation to simultaneously route additional limit orders to trade with such protected quotation. Proposed Rule 67(f)(4)(C)(iii) would provide that, in order to avoid trading with an arriving order at the price of a protected quotation, resting non-displayed interest will either be routed, cancelled, or re-priced, consistent with the terms of the order.
- Proposed Rule 67(f)(4)(D) would provide that d-Quotes in Pilot Securities in Test Group Three would not exercise discretion as provided for in Rule 70.25—Equities if (i) exercising such discretion would result in an execution at the price of a protected quotation, or (ii) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote. As defined in Rule 70.25—Equities, a d-Quote is an e-Quote, *i.e.,* a Floor broker agency interest file, that has discretionary instructions as to size or price, or both. The discretionary price or size at which a d-Quote may trade is not displayed. If the discretionary instructions of a d-Quote cannot be met, it will trade as a regular e-Quote at its filed price.[37] As provided for in Rule 70.25(e)(v)(A)(1)—Equities, to determine whether to exercise discretion for d-Quotes on the Exchange's book, the Exchange will use the amount of discretion necessary to permit a trade on the Exchange consistent with Rule 611. Therefore, a d-Quote may exercise discretion to trade at the price of a protected quotation, but not through the price of a protected quotation. Because interest that is non-displayed cannot price match protected quotations under the Trade-at Prohibition, the Exchange proposes to amend the operation of d-Quotes in Pilot Securities in Test Group Three to prevent the possibility that exercising discretion, *i.e.,* a trade at a non-displayed price, would result in a trade at the price of a protected quotation. To effect this change, the Exchange proposes that the Exchange would not exercise discretion for a d-Quote if exercising discretion would result in an execution at the price of a protected quotation. In addition, the Exchange proposes that if the protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote, the Exchange would not exercise discretion for that d-Quote.[38] The Exchange believes that restricting d-Quote discretion in these circumstances would reduce the potential for non-displayed interest to

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[32] For example, a Do Not Ship (DNS) Order will cancel if compliance with Exchange rules or federal securities laws requires that all or part of such order be routed to another market center for execution. *See* Rule 13(e)(2)—Equities.

[33] A "Non Displayed Reserve Order" is a Limit Order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. *See* Rule 13(d)(1)(A)—Equities.

[34] *See* Rule 70(f)(ii)—Equities.

[35] A "Minimum Display Reserve Order" is a Limit Order that will have a portion of the interest displayed when the order is or becomes the Exchange BBO and a portion of the interest ("reserve interest") that is not displayed. *See* Rules 13(d)(2)(C)—Equities and 70(f)(i)—Equities.

[36] *See* Rule 13(f)(1)(A)—Equities (Pegging interest includes non-displayable interest to buy or sell at a price to track the same-side PBBO). d-Quotes enable Floor brokers to enter discretionary instructions as to the price at which the d-Quote may trade and the number of shares to which the discretionary price instructions apply. Executions of d-Quotes within a discretionary pricing instruction range are considered non-displayable interest for purposes of Rule 72—Equities. *See* Rule 70.25(a)(ii)—Equities.

[37] *See* Rule 70.25(a)(iv)—Equities.

[38] For example, assume the Exchange has a resting d-Quote to buy with $0.10 of price discretion that is filed at $10.05 and there is a protected bid of $10.05 and a protected offer of $10.20. Assume that the Exchange receives a sell order priced at $10.10. Under Rule 70.25, the resting d-Quote to buy could exercise price discretion to trade with that incoming order. However, under proposed Rule 67(f)(4)(D), for Pilot Securities in Test Group Three, that resting d-Quote order to buy would not exercise price discretion because it would result in a trade based on a non-displayed price that would be ahead of the same-side protected bid.

execute at the price of a protected quotation, in violation of the Trade-at Prohibition.

- Proposed Rule 67(f)(4)(E) would provide that only buy and sell orders that are entered into the Cross Function pursuant to Supplementary Material .10 to Rule 76—Equities [39] would be eligible for the Block Size exception to the Trade-at Prohibition set forth in Rule 67(e)(4)(C)(iii), as amended. Rule 67(e)(4)(C)(iii), described in more detail above, sets forth the Block Size exception to the Trade-at Prohibition. The Exchange believes that orders that meet the Block Size definition and that are entered pursuant to Rule 76.10—Equities would meet this exception because the Cross Function identifies when eligible orders can be executed at a price.[40]
- Proposed Rule 67(f)(4)(G) would specify behavior of certain Self-Trade Prevention ("STP) Modifiers in Test Group Three and would provide that incoming orders designated with an STPN Modifier would cancel before routing or trading with non-displayed orders if the opposite-side resting interest marked with an STP modifier with the same market participant identifier ("MPID") is a displayed order. Rule 13(f)(3)—Equities describes the Exchange's STP Modifiers. As provided for in Rule 13(f)(3)(A)—Equities, an incoming order designated with an STP modifier will be prevented from executing against a resting opposite-side order also designated with an STP modifier with the same MPID. Such incoming order will execute against all available opposite-side interest, displayed and non-displayed, and will be evaluated for cancellation only to the extent it would execute against opposite-side interest with an STP modifier with the same MPID. Rule 13(f)(3)(C)(i)—Equities further describes the STP Cancel Newest ("STPN") modifier, pursuant to which, after executing with all other opposite-side interest that does not have an STP modifier with the same MPID, the remaining balance of the incoming order would cancel. For Pilot Securities in Test Group Three, because an incoming order cannot trade with non-displayed interest before routing to protected quotations, orders with an STP modifier will first be evaluated against displayed orders, then routed to protected quotations, if applicable. Only then would an incoming order with an STP modifier be evaluated against resting non-displayed orders with an STP modifier from the same MPID. However, for Pilot Securities in Test Group Three with an STPN modifier, the Exchange proposes that if there are opposite-side displayed orders with an STP modifier from the same MPID, consistent with the STPN instruction, such incoming order with an STPN modifier would cancel in order to prevent an execution of that order against the resting displayed order with the matching STP modifier. As such, an order with an STPN modifier will not route or trade with resting non-displayed orders that do not include an STP modifier from the same MPID if there is a resting displayed order with an STP modifier from the same MPID.
- Finally, proposed Rule 67(f)(4)(G) would provide that g-Quotes and Buy Minus/Zero Plus Orders, as defined in Rule 13—Equities, would be rejected.
  - A g-Quote is an electronic method for Floor brokers to represent orders that yield priority, parity and precedence based on size to displayed and non-displayed orders on the Exchange's book, in compliance with Section 11(a)(1)(G) of the Act.[41] Under the Trade-at Prohibition, however, because incoming orders would route to protected quotations before trading with non-displayed interest, a resting g-Quote would be required to yield not only to non-displayed orders on the Exchange's book, but also protected quotations, even if the g-Quote were displayed. Because the Exchange believes that yielding to away protected quotations does not further the goals of Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[42] the Exchange has determined to reject G-quotes in Pilot Securities in Test Group Three. The Exchange notes that making g-Quotes unavailable in Test Group Three would not disadvantage member organizations from effecting transactions for their own account, the account of an associated person, or any other account of which it or an associated person exercises discretion at the Exchange. Such orders could be routed to an unaffiliated Floor broker for entry on the Exchange or entered electronically into Exchange systems from an off-Floor location.
  - An order with a "Buy Minus Zero Plus" instruction will not trade at a price that is higher than the last sale, subject to its limit price, if applicable.[43] As such, Buy Minus/Zero Plus Orders assist member organizations with compliance with the "safe harbor" provisions of Rule 10b–18 under the Act ("Rule 10b–18") for issuer repurchases.[44] Under regular processing, an incoming order that trades with both displayed and non-displayed resting orders is reported as a single transaction to the Consolidated Tape. Under Rule 1004—Equities, that bundled reported transaction would be used to determine whether to elect a Buy Minus/Zero Plus Order. However, for Pilot Securities in Test Group Three, because the Exchange would trade an incoming order first with displayed orders and then route to protected quotations before trading with non-displayed orders, any executions against displayed orders and non-displayed orders at the same price would be reported as separate transactions to the Consolidated Tape. As such, under Rule 1004—Equities, that first print of the displayed orders could elect a Buy Minus/Zero Plus Order. The Exchange does not believe that this processing would be consistent with how Buy Minus/Zero Plus Orders function on the Exchange as it would result in the elected Buy Minus/Zero Plus Order, which would trade as a Market Order, interrupting the allocation process of that incoming order. To prevent this result, the Exchange proposes not to make this order type available for Pilot Securities in Test Group Three. As proposed, Buy Minus/Zero Plus Orders would therefore be rejected if entered in Pilot Securities in Test Group Three.

Proposed Amendments to Other Exchange Rules

The Exchange also proposes to amend Rule 80C governing the Limit Up/Limit Down ("LULD") price controls pursuant to the NMS Plan to Address Extraordinary Market Volatility ("LULD Plan") [45] and Rule 1000(c)—Equities governing Trading Collars in order to facilitate compliance with the Plan. These proposed rule changes are designed to facilitate compliance with the Plan and would be applicable across all securities that trade at the Exchange, regardless of the applicable MPV.

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[39] Supplementary Material .10 to Rule 76—Equities provides for a "Cross Function" that Floor brokers may use to monitor compliance with Rule 611 of Regulation NMS. To be eligible for this Cross Function, the proposed cross transaction must be for at least 10,000 shares or a quantity of stock having a market value of $200,000 or more.

[40] *See* Rule 76.10(a)—Equities.

[41] Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. Subsection (G) of Section 11(a)(1) and provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction, also known as a "G order" provided such order yields priority, parity, and precedence.

[42] See 15 U.S.C. 78k(a)(1); 17 CFR 240.11a2–2(T).

[43] The Exchange recently filed to amend Rule 13—Equities to eliminate orders with a sell "plus" and buy "minus" instruction and retain the "Buy Minus Zero Plus" instruction. *See* SR–NYSEMKT–2016–81.

[44] *See* 17 CFR 240.10b–18.

[45] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

In particular, the Exchange proposes to add a new subsection (8) to Rule 80C(a)—Equities that would specify that, after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the SIP under the LULD Plan, the Exchange would calculate Price Bands based on the first Reference Price provided to the SIP and, if such Price Bands are not in the MPV for the security, round such Price Bands to the nearest price at the applicable MPV. The Exchange would apply this standard rounding calculation regardless of the MPV of the security.

The Exchange also proposes to amend Rule 1000(c)(i)—Equities, which describes the calculation of Trading Collars, to specify that Trading Collars for both buy and sell orders that are not in the MPV for the security, as defined in Supplemental Material .10 to Rule 62—Equities, would be rounded down to the nearest price at the applicable MPV.

Proposed Non-Substantive Amendments to Rule 67

Finally, the Exchange proposes to make non-substantive, technical amendments to Rule 67. First, the Exchange proposes to amend Rule 67(a)(1)(D)(ii) to add the word "displayed" between the words "full" and "size" so that the full clause would provide "are routed to execute against the full displayed size of any protected bid." This proposed amendment makes the rule text parallel with the existing rule text that provides "or the full displayed size of any protected offer." Second, the Exchange proposes to amend Rule 67(e)(4)(C)(xv) to correct a typographical error and change the word "bond" to "bona" when using the phrase "bona fide error."

Implementation Date

If the Commission approves the proposed rule changes, the proposed rule changes will be effective upon Commission approval and shall become operative upon commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[46] in general, and furthers the objectives of Section 6(b)(5) of the Act[47] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The proposed rule change is designed to comply with the Plan, reduce complexity and enhance system resiliency while not adversely affecting the data collected under the Plan. The Exchange believes that the proposed rule changes are thus reasonably designed to comply with applicable quoting and trading requirements specified in the Plan and, as discussed further below, other applicable regulations.

The Exchange believes that the proposed changes to order behavior for Pilot Securities in Test Group Three would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed, and necessary, to modify order behavior to comply with the Trade-at Prohibition by eliminating the ability for orders that can trade at a non-displayed price to price match protected quotations. As the Commission noted in the Tick Plan Approval Order, the Plan is reasonably designed to provide measurable data that should facilitate the ability of the Commission, the public, and market participants to review and analyze the effect of tick size on the trading, liquidity, and market quality of securities of smaller capitalization companies.[48] The Plan thus provides for a mechanism to provide a data-driven approach to evaluate whether certain changes to market structure for Pilot Securities would be consistent with the Commission's mission to protect investors, maintain fair and orderly and efficient markets, and facilitate capital formation.[49] By having three test groups, the data that will be collected will demonstrate how behavior will change based on the differing requirements of the test groups. Because there are different requirements for the three Test Groups, a logical consequence is that order behavior will change depending on the requirements of each Test Group, which is the purpose of having a pilot with three test groups.

With respect to Pilot Securities in Test Group Three, the Commission recognized the particular complexity of implementing and complying with the Trade-at Prohibition, including that trading centers would need to "monitor protected quotations on other trading centers and prevent an execution that would match the price of any such quotation unless the trading center itself was displaying a protected quotation" and that "compliance with the Trade-at Prohibition would require systems changes by trading centers." centers that are not registered exchanges will be able to implement compliance with the Trade-at Prohibition by modifying the behavior of order types that currently price match protected quotations and without public notice and without filing any rule changes with the Commission. Such modified behavior would be applicable, and indeed required, only for Pilot Securities in Test Group Three. Applying the modified order behavior for compliance with the Trade-at Prohibition to Pilot Securities in other Test Groups would moot the differences between the Test Groups, which would thwart the ability to assess any meaningful differences in order behavior for the three Test Groups.

As a trading center, the Exchange must also modify behavior of order types to comply with the Trade-at Prohibition. However, as a registered exchange, the Exchange has rules that are filed with the Commission that describe in detail order behavior, including current order behavior that is designed in compliance with Rules 610(d) and 611 of Regulation NMS. These existing rules provide for non-displayed order types to price match protected quotations even if not displaying a quote at that price. Unlike a trading center that is not a registered exchange, the Exchange is required to file a proposed rule change to describe how it would modify order behavior in compliance with the Plan.[51] For the Exchange to implement compliance with the Plan, and specifically the requirements of the Trade-at Prohibition, the Exchange assessed its order type behavior and identified those changes that would be necessary to prevent an execution on a non-displayed order that would match the price of protected quotation unless that Away Market is displaying a protected quotation.

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[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

[48] *See* Tick Plan Approval Order, *supra* note 6, at 27529.

[49] *Id.*

[50] *Id.* at 27530.

[51] Section 19(b)(1) of the Act requires that each self-regulatory organization shall file with the Commission, in accordance with Rule 19b–4 thereunder, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization. 15 U.S.C. 78s(b)(1).

The Exchange believes that the proposed changes regarding ISOs, MPL Orders, RPI Orders, resting non-displayed interest, d-Quotes, buy and sell orders entered into the Cross Function, STPN Modifiers, Buy Minus/Zero Plus Orders, and g-Quotes and how the Exchange allocates and routes incoming orders are consistent with the Act because they are intended to modify the Exchange's system to comply with the provisions of the Plan and the different requirements for the three Test Groups and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. For Pilot Securities in Test Group Three, the Exchange believes that the proposed modifications to order behavior are designed to prevent executions of orders with a non-displayed working price from price matching a protected quotation. These are precisely the type of order behavior changes contemplated by the Plan; complying with the Trade-at Prohibition by definition requires differing order behavior as compared to the other Test Groups or the control group. For example, the Exchange proposes that order types that are eligible to trade at non-displayed prices that would be equal to the PBBO would be re-priced, cancelled, or routed to assure that such orders would not price match a protected quotation in violation of the Trade-at Prohibition. Likewise, for d-Quotes, for Pilot Securities in Test Group Three only, the Exchange would not exercise discretion if it could result in a violation of the Trade-at Prohibition. The Exchange would not apply these order behavior changes to Pilot Securities in Test Groups One and Two because to do so would subvert the quality of data collected; Test Groups One and Two do not have the Trade-at Prohibition and therefore non-displayed orders in those Test Groups may price match a protected quotation, provided such executions are in the applicable MPV for the security.

In addition, the Exchange proposes to reject g-Quotes and Buy Minus/Zero Plus Orders and modifying the behavior of incoming orders with an STPN modifier in Test Group Three only because application of the Trade-at Prohibition to these order types would impair the function of those order types. For g-Quotes, in order to meet the requirement to yield to all orders on the Exchange's book, including non-displayed orders, to comply with the Trade-at Prohibition, g-Quotes would also have to yield to protected quotations, even if the g-Quote were displayed. The Exchange believes that this processing would be inconsistent with the purpose of g-Quotes. The Exchange notes that making g-Quotes unavailable in Test Group Three would not disadvantage member organizations from effecting transactions for their own account, the account of an associated person, or any other account of which it or an associated person exercises discretion at the Exchange. Such orders could be routed to an unaffiliated Floor broker for entry on the Exchange or entered electronically into Exchange systems from an off-Floor location. For Buy Minus/Zero Plus Orders, such orders are currently elected based on a bundled transaction that is reported to the Tape that includes executions of both displayed and non-displayed orders. Under the Trade-at Prohibition, because executions against displayed interest would be reported to the Consolidated Tape separately from executions against non-displayed interest, under Rule 1004, a Buy Minus/Zero Plus Order would be elected and converted to a Market Order in the middle of processing an incoming order. The Exchange believes that this would undermine the purpose of a Buy Minus/Zero Plus Order and would introduce unnecessary complexity into the processing of orders. The Exchange notes that no other exchange offers an instruction similar to the Buy Minus/Zero Plus Order. Because these proposed rule changes are intended to comply with the Plan, the Exchange believes that these proposals are in furtherance of the objectives of the Plan, as identified by the Commission, and are therefore consistent with the Act.

The Exchange further believes that that rejecting g-Quotes and Buy Minus/Zero Plus Orders for Pilot Securities in Test Group Three is consistent with the Act because the proposed changes are designed to eliminate unnecessary trading system complexity and risk. Regulation SCI required the Exchange to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act. The proposed change is intended to reduce trading system complexity and risk to ensure the Exchange's technology remains robust and resilient.[52] Specifically, as noted above, to comply with the Trade-at Prohibition, both g-Quotes and Buy Minus/Zero Plus Orders would not function in the same manner as currently provided for, and the Exchange believes that applying the Trade-at Prohibition to these order types would introduce unnecessary complexity and risk that would not further the objectives of how these order types are intended to function.

Lastly, the Exchange believes that the proposed amendments to Rules 80C and 1000(c) would remove impediments to and perfect the mechanism of a free and open market and a national market system as they provide transparency regarding (1) how the Exchange would calculate and round Price Bands under the LULD Plan after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the SIP, and (2) that Trading Collars for both buy and sell orders that are not in the MPV for the security would be rounded down to the nearest price at the applicable MPV.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to assist the Exchange in meeting its regulatory obligations pursuant to the Plan, reduce system complexity, and enhance resiliency. The Plan requires all trading centers, including over-the-counter markets, to implement changes to comply with the requirements of the Plan and specifically the Trade-at Prohibition. The Exchange fully expects that, in order to comply with the Trade-at Prohibition, trading centers other than registered exchanges will modify the behavior of orders for Pilot Securities in Test Group Three that will not be applied to Pilot Securities in Test Groups One and Two. Unlike such trading centers, as a self-regulatory organization, under Section 19(b)(1) of the Act,[53] the Exchange is required to file proposed rule changes for any modifications to order behavior that it proposes for the Plan. The absence of Commission approval of these proposed rule changes would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because trading centers that are not registered exchanges would be able to implement changes to comply with the Plan, but the Exchange would not. The Exchange believes that a disapproval of the Exchange's proposed rules would therefore put the Exchange at a competitive disadvantage vis-à-vis the over-the-counter markets because such trading centers would be able to modify the behavior of non-displayed orders in Test Group Three without restriction. The Exchange further notes that the proposed rule change will apply equally to all member organizations that trade Pilot Securities.

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[52] The Commission has expressed concern regarding potential market instability caused by technological risks. *See* Chair Mary Jo White, Commission, "Enhancing Our Equity Market Structure" (June 5, 2014), available at *https://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y.*

[53] 15 U.S.C. 78s(b)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange respectfully requests accelerated effectiveness of this proposed rule change pursuant to Section 19(b)(2) of the Act.[54] The Exchange believes that there is good cause for the Commission to accelerate effectiveness because the proposed rule changes are designed to specify procedures for the handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Groups One, Two, and Three. In determining the scope of these proposed changes to implement the Plan, the Exchange reviewed its order types and identified which orders and instructions would be inconsistent with the Plan and propose to modify the operation of such order types so they will comply with the Plan, or, to the extent inconsistent with the Plan, eliminate them. These proposed changes are consistent with the protection of investors and the public interest because they are designed to comply with the Plan and to allow the Exchange to meet its regulatory obligations under the Plan. Because the Plan will be implemented beginning on October 3, 2016, the Exchange believes there is good cause to accelerate effectiveness so that the Exchange may implement the proposed changes concurrent with the implementation date of the Plan.

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–83. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–83, and should be submitted on or before September 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22152 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 15Bc3–1 and Form MSDW, SEC File No. 270–93, OMB Control No. 3235–0087.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 15Bc3–1 (17 CFR 240.15Bc3–1) and Form MSDW (17 CFR 249.1110) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*).

Rule 15Bc3–1 provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW. The Commission uses the information contained in Form MSDW in determining whether it is in the public interest to permit a bank municipal securities dealer to withdraw its registration. This information is also important to the municipal securities dealer's customers and to the public, because it provides, among other things, the name and address of a person to contact regarding any of the municipal securities dealer's unfinished business.

Based upon past submissions, the staff estimates that, on an annual basis, approximately five bank municipal securities dealers will file a notice of withdrawal from registration with the Commission as a bank municipal securities dealer on Form MSDW. The staff estimates that the average number of hours necessary to comply with the notice requirements set out in Rule 15Bc3–1 and Form MSDW is 0.5 per respondent, for a total burden of 2.5 hours per year. The staff estimates that the average internal compliance cost per hour is approximately $343. Therefore, the estimated total cost of compliance for the respondents is approximately $858.

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[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

Providing the information on the application is mandatory in order to withdraw from registration with the Commission as a bank municipal securities dealer. The information contained in the notice will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 9, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–22170 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 15Ba2–1 and Form MSD; SEC File No. 270–0088; OMB Control No. 3235–0083.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information provided for in Rule 15Ba2–1 (17 CFR 240.15Ba2–1) and Form MSD (17 CFR 249.1100) under the Securities Exchange Act of 1934 ("Exchange Act") (17 U.S.C. 78a *et seq.*).

Rule 15Ba2–1 provides that an application for registration with the Commission by a bank municipal securities dealer must be filed on Form MSD. The Commission uses the information obtained from Form MSD filings to determine whether bank municipal securities dealers meet the standards for registration set forth in the Act, to maintain a central registry where members of the public may obtain information about particular bank municipal securities dealers, and to develop risk assessment information about bank municipal securities dealers.

Based upon past submissions, the staff estimates that approximately 21 respondents will utilize this application procedure annually. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 15Ba2–1 and Form MSD is 1.5 hours per respondent, for a total burden of approximately 31.5 hours per year. The staff estimates that the average internal compliance cost per hour is approximately $343. Therefore, the estimated total annual cost of compliance for the respondents is approximately $10,805.

Rule 15Ba2–1 does not contain an explicit recordkeeping requirement, but the rule does require the prompt correction of any information on Form MSD that becomes inaccurate, meaning that bank municipal securities dealers need to maintain a current copy of Form MSD indefinitely. Providing the information on the application is mandatory in order to register with the Commission as a bank municipal securities dealer. The information contained in the application will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 9, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–22169 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78796; File No. SR–BatsBZX–2016–55]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.27(b) Regarding the Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

September 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2016, Bats BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Exchange Rule 11.27(b) regarding the data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, the Exchange, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder,[7] the Plan to Implement a Tick Size Pilot Program (the "Plan").[8] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[9] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[13] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[14] will apply to the Trade-at requirement.

The Plan also requires a Trading Center[15] or a Market Maker[16] to collect and transmit certain data to its designated examining authority ("DEA"), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid and National Best Offer quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[17] On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.[18] As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

On November 13, 2015, the Exchange filed with the Commission a proposed rule change to adopt Exchange Rule 11.27(b) to implement the data collection requirements of the Plan.[19] On December 9, 2015, FINRA, on behalf of the Plan Participants, submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.[20] On February 10,

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[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[9] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[11] *See* Section VI(B) of the Plan.

[12] *See* Section VI(C) of the Plan.

[13] *See* Section VI(D) of the Plan.

[14] 17 CFR 242.611.

[15] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[16] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[17] *See* Approval Order at 27533 and 27545.

[18] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4–657).

[19] *See* Securities Exchange Act Release No. 76524 (November 19, 2015), 80 FR 75141 (November 25, 2015) (Notice of Filing of File No. SR–BATS–2015–102).

The Exchange also submitted a proposed rule change to implement the quoting and trading requirements of the Plan. *See* Securities Exchange Act Release No. 76552 (December 3, 2015), 80 FR 76591 (December 9, 2015) (Notice of Filing of File No. SR–BATS–2015–108). The Commission approved that proposal on February 23, 2016. *See* Securities Exchange Act Release No. 77291 (March 3, 2016), 81 FR 12543 (March 9, 2016) (Order Approving File No. SR–BATS–2015–108).

[20] *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted the Exchange a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading

2016, the Commission approved the Exchange's rule change, as amended, to implement the data collection requirements of the Plan, and also granted exemptive relief from complying with certain data collection and reporting requirements in the Plan.[21]

The Exchange now proposes to further amend Rule 11.27(b) to modify additional data collection and reporting requirements.[22] First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. The Exchange and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, *i.e.*, without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. The Exchange, therefore, proposes to modify Supplementary Material [sic].04 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. The Exchange and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than $0.10 away from the NBBO for purposes of Appendix B reporting. The Exchange therefore proposes to amend Supplementary Material [sic].06 to provide that limit orders priced more than $0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and The Exchange and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within $0.10 of the NBBO) (14). The Exchange and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are "resting." The Exchange, therefore, proposes to amend Supplementary Material .[sic]06 to make this change.

In the fourth change, the Exchange proposes to add new Supplementary Material [sic].09 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. The Exchange and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. The Exchange is therefore proposing this change as part of Supplementary Material [sic].09. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. The Exchange and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and the Exchange is therefore proposing this change as part of Supplementary Material [sic].09.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the National Best Bid or National Best Offer (NBBO) at the time of or immediately before the trade for both share and trade participation calculations. The Exchange and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. The Exchange therefore proposes to make this change as part of Supplementary Material [sic].09.

Finally, the Exchange proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Supplementary Material [sic].10 provides that Pre-Pilot Data Collection Securities are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Exchange and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. According, the Exchange is revising Supplementary Material [sic].10 (which will be re-numbered as Supplementary Material [sic].11) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.[23]

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and Markets, Commission to Eric Swanson, General Counsel, the Exchange, dated February 10, 2016 ("Exemption Letter").

[21] *See* Securities Exchange Act No. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (Order Approving File No. SR–BATS–2015–102); *see* letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, Executive Vice President, General Counsel and, the Exchange, dated February 10, 2016.

[22] The Exchange notes that, in connection with this proposed rule change, FINRA, on behalf of the Plan Participants, intends to file an exemptive request seeking relief from certain of the Plan's data collection requirements.

[23] After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. The Exchange and the other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period—*i.e.*, September 3, 2016—the Exchange and the Exchange members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using the Exchange's published Pre-Pilot Data

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As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness. The Exchange has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[24] in general, and furthers the objectives of Section 6(b)(5) of the Act[25] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how the Exchange and Participants that operate Trading Centers collect and report data. The Exchange notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and Exchange Rule 11.27(b). In addition, the proposed rule change applies equally to all similarly situated members. Therefore, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[26] and Rule 19b–4(f)(6)[27] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6)[28] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[29] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that so that the proposed rule change can become operative on August 30, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[30]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[31]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBZX–2016–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

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Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78s(b)(3)(C).

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–55 and should be submitted on or before October 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22146 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

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[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78800; File No. SR–FINRA–2016–035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6191 Relating to the Data Collection Requirements of the Regulation NMS Plan To Implement A Tick Size Pilot Program

September 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6191 to modify certain data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program (Plan).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, FINRA, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act[4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program (the "Plan").[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[7] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[8]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[9] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[10] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[11] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[12] will apply to the Trade-at requirement.

The Plan also requires a Trading Center[13] or a Market Maker[14] to collect and transmit certain data to its designated examining authority ("DEA"), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[9] *See* Section VI(B) of the Plan.

[10] *See* Section VI(C) of the Plan.

[11] *See* Section VI(D) of the Plan.

[12] 17 CFR 242.611.

[13] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[14] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid or National Best Offer ("NBBO") quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[15] On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.[16] As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

On November 13, 2015, FINRA filed with the Commission a proposed rule change to adopt FINRA Rule 6191(b) and amend FINRA Rule 7440 to implement the data collection requirements of the Plan.[17] On December 9, 2015, FINRA submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.[18] On February 17, 2016, the Commission approved FINRA's rule change, as amended, to implement the data collection requirements of the Plan, and also granted exemptive relief from complying with certain data collection and reporting requirements in the Plan.[19]

FINRA now proposes to further amend Rule 6191 to modify additional data collection and reporting requirements.[20] First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. FINRA and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, *i.e.,* without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. FINRA, therefore, proposes to modify Supplementary Material .05 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. FINRA and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than $0.10 away from the NBBO for purposes of Appendix B reporting. FINRA therefore proposes to amend Supplementary Material .09 to provide that limit orders priced more than $0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and FINRA and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within $0.10 of the NBBO) (14). FINRA and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are "resting." FINRA, therefore, proposes to amend Supplementary Material .09 to make this change.

In the fourth change, FINRA proposes to add new Supplementary Material .11 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. FINRA and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. FINRA is therefore proposing this change as part of Supplementary Material .11. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. FINRA and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and FINRA is therefore proposing this change as part of Supplementary Material .11.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the NBBO at the time of or immediately before the trade for both share and trade participation calculations. FINRA and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. FINRA therefore proposes to make this change as part of Supplementary Material .11.

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[15] *See* Approval Order at 27533 and 27545.

[16] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4–657).

[17] *See* Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (Notice of Filing of File No. SR–FINRA–2015–048).

FINRA also submitted a proposed rule change to implement the quoting and trading requirements of the Plan. *See* Securities Exchange Act Release No. 76483 (November 19, 2015), 80 FR 73853 (November 25, 2015) (Notice of Filing of File No. SR–FINRA–2015–047). The Commission approved that proposal on February 23, 2016. *See* Securities Exchange Act Release No. 77218 (February 23, 2016), 81 FR 10290 (February 29, 2016) (Order Approving File No. SR–FINRA–2015–047).

[18] *See* Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated December 9, 2015 ("Exemptive Request").

[19] *See* Securities Exchange Act No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Order Approving File No. SR–FINRA–2015–048); *see* letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

[20] FINRA notes that, in connection with this proposed rule change, FINRA intends to file an exemptive request seeking relief from certain of the Plan's data collection requirements.

Finally, FINRA proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Supplementary Material .13 provides that Pre-Pilot Data Collection Securities are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. FINRA and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. According, FINRA is revising Supplementary Material .13 (which will be re-numbered as Supplementary Material .14) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.[21]

FINRA has filed the proposed rule change for immediate effectiveness. FINRA has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,[23] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. FINRA believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA notes that the proposed rule change implements the provisions of the Plan, and is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan. FINRA also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how FINRA and Participants that operate Trading Centers collect and report data. FINRA notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and FINRA Rule 6191. In addition, the proposed rule change applies equally to all similarly situated members. Therefore, FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6)[25] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6)[26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that so that the proposed rule change can become operative on August 30, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow FINRA to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[28]

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[21] After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. FINRA and the other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period—*i.e.*, September 3, 2016—FINRA and FINRA members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using FINRA's published Pre-Pilot Data Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

[22] 15 U.S.C. 78*o*–3(b)(6).

[23] 15 U.S.C. 78*o*–3(b)(9).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[29]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–035 and should be submitted on or before October 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Brent J. Fields,

Secretary.

[FR Doc. 2016–22149 Filed 9–14–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14837 and #14838]

California Disaster #CA–00254

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 09/06/2016.

Incident: Clayton Fire.

Incident Period: 08/13/2016 through 08/26/2016.

Effective Date: 09/06/2016.

Physical Loan Application Deadline Date: 11/07/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lake

Contiguous Counties:

California: Colusa, Glenn, Mendocino, Napa, Sonoma, Yolo

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 148375 and for economic injury is 148380.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 6, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–22120 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14835 and #14836]

Iowa Disaster #IA–00066

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Iowa dated 09/06/2016.

Incident: Severe Weather and Flash Flooding.

Incident Period: 08/23/2016 through 08/24/2016.

Effective Date: 09/06/2016.

Physical Loan Application Deadline Date: 11/07/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

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[28] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78s(b)(3)(C).

[30] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Winneshiek.

Contiguous Counties:

Iowa: Allamakee, Chickasaw, Clayton, Fayette, Howard.

Minnesota: Fillmore, Houston.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14835 B and for economic injury is 14836 0.

The States which received an EIDL Declaration # are Iowa, Minnesota.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 6, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–22108 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14775 and #14776]

Oklahoma Disaster Number OK–00105

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–4274–DR), dated 07/15/2016.

Incident: Severe Storms and Flooding.

Incident Period: 06/11/2016 through 06/13/2016.

EFFECTIVE DATE: 08/30/2016.

Physical Loan Application Deadline Date: 09/13/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 04/17/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 07/15/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Jackson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–22110 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14839 and #14840]

California Disaster #CA–00252

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 09/06/2016.

Incident: Soberanes Fire.

Incident Period: 07/22/2016 and continuing.

Effective Date: 09/06/2016.

Physical Loan Application Deadline Date: 11/07/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Monterey.

Contiguous Counties:

California: Fresno, Kings, San Benito, San Luis Obispo, Santa Cruz.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14839 5 and for economic injury is 14840 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 6, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–22109 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14811 and #14812]

Louisiana Disaster Number LA–00065

AGENCY: U.S. Small Business Administration

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA—4277—DR), dated 08/14/2016.

Incident: Severe Storms and Flooding.

Incident Period: 08/11/2016 through 08/31/2016.

Effective Date: 09/02/2016.

Physical Loan Application Deadline Date: 10/13/2016.

EIDL Loan Application Deadline Date: 05/15/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Louisiana, dated 08/14/2016 is hereby amended to establish the incident period for this disaster as beginning 08/11/2016 and continuing through 08/31/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–22119 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14833 and #14834]

Indiana Disaster #IN–00058

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 09/02/2016.

Incident: Torrential Rainfall.

Incident Period: 08/15/2016 through 08/16/2016.

Effective Date: 09/02/2016.

Physical Loan Application Deadline Date: 11/01/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: St Joseph.

Contiguous Counties:

Indiana: Elkhart, La Porte, Marshall, Starke

Michigan: Berrien, Cass

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14833 B and for economic injury is 14834 0.

The States which received an EIDL Declaration # are Indiana, Michigan.

(Catalog of Federal Domestic Assistance Numbers 59008)

Dated: September 2, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–22113 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14813 and #14814]

Louisiana Disaster Number LA–00066

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–4277–DR), dated 08/16/2016.

Incident: Severe Storms and Flooding.

Incident Period: 08/11/2016 through 08/31/2016.

Effective Date: 09/02/2016.

Physical Loan Application Deadline Date: 10/17/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 05/16/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Louisiana, dated 08/16/2016, is hereby amended to establish the incident period for this disaster as beginning 08/11/2016 and continuing through 08/31/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–22115 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14841 and #14842]

California Disaster #CA–00253

AGENCY: U.S. Small Business Administration

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 09/06/2016.

Incident: Blue Cut Fire.

Incident Period: 08/16/2016 through 08/22/2016.

Effective Date: 09/06/2016.

Physical Loan Application Deadline Date: 11/07/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: San Bernardino.
Contiguous Counties:
California, Inyo, Kern, Los Angeles, Orange, Riverside.
Arizona: La Paz, Mohave.
Nevada: Clark.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non–Profit Organizations With Credit Available Elsewhere	2.625
Non–Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14841 5 and for economic injury is 14842 0.

The States which received an EIDL Declaration # are California, Arizona, Nevada.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 6, 2016.

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2016–22114 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14813 and #14814]

Louisiana Disaster Number LA–00066

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–4277–DR), dated 08/16/2016.

Incident: Severe Storms and Flooding.

Incident Period: 08/11/2016 and continuing.

Effective Date: 09/01/2016.

Physical Loan Application Deadline Date: 10/17/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 05/16/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Louisiana, dated 08/16/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Parishes: Assumption, Cameron, Saint Charles, Saint James, St John The Baptist, West Baton Rouge

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2016–22116 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14811 and #14812

Louisiana Disaster Number LA–00065

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4277–DR), dated 08/14/2016.

Incident: Severe Storms and Flooding.

Incident Period: 08/11/2016 and continuing.

Effective Date: 09/01/2016.

Physical Loan Application Deadline Date: 10/13/2016.

EIDL Loan Application Deadline Date: 05/15/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of LOUISIANA, dated 08/14/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes: (Physical Damage and Economic Injury Loans):
Saint James, West Baton Rouge.
Contiguous Parishes: (Economic Injury Loans Only):
Louisiana: LaFourche.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2016–22117 Filed 9–14–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9717]

Culturally Significant Object Imported for Exhibition Determinations: "Lives Bound Together: Slavery at George Washington's Mount Vernon" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "Lives Bound Together: Slavery at George Washington's Mount Vernon," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at George Washington's Mount Vernon, Mount Vernon, Virginia, from on or about September 16, 2016, until on or about March 13, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including an object list, contact the Office of Public Diplomacy and Public Affairs in the

Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 9, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–22385 Filed 9–14–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Nineteenth Meeting of the NextGen Advisory Committee (NAC)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Nineteenth Meeting of the NextGen Advisory Committee (NAC).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Nineteenth Meeting of the NextGen Advisory Committee (NAC).

DATES: The meeting will be held October 5, 2016, 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at: JetBlue University (The Lodge at JBU), 8265 Hangar Boulevard, Orlando, Florida 32827.

FOR FURTHER INFORMATION CONTACT: Andy Cebula, NAC Secretariat, 202–330–0652, *acebula@rtca.org,* 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Nineteenth Meeting of the NextGen Advisory Committee (NAC). The agenda will include the following:

October 5, 2016, 8:30 a.m. to 3:00 p.m.

1. Opening of Meeting/Introduction of NAC Members—Chairman Richard Anderson
2. Official Statement of Designated Federal Official—Victoria Wassmer, FAA Acting Deputy Administrator
3. Review and Approval of June 17, 2016 Meeting Summary and Revised Terms of Reference
4. Chairman's Report—Chairman Anderson
5. FAA Report—FAA
6. NAC Communications AdHoc Task Group—Interim Report
7. Airline C/N/S Fleet Plans—United, American, SkyWest; ADS–B Update—FAA
8. Status Reports & Rolling Plan: DataComm, Multiple Runway Operations, Surface, Performance Based Navigation (PBN)
9. PBN Time, Speed, Spacing Task Group—Final Report for Approval
10. Joint Analysis Team—Final Report: Performance Navigation Procedures: North Texas Metroplex, Denver Established on RNP—Final Report for Approval
11. Enhanced Surveillance Task Group—Interim Report
12. Summary of meeting and next steps
13. Closing Comments—DFO and NAC Chairman
14. Other business
15. Adjourn

Although the NAC meeting is open to the public, the meeting location has limited space and security protocols that require advanced registration. Please email *bteel@rtca.org* with name, company and country of citizenship to pre-register *no later than September 29, 2016.* With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 12, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–22209 Filed 9–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: TreasuryDirect Customer Feedback

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning TreasuryDirect Customer Feedback.

DATES: Written comments should be received on or before November 14, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mike McDougle, Director, Division of Business Systems; 200 Third Street, Room T5–K2, Parkersburg, WV 26106–1328, (304) 480–6268.

SUPPLEMENTARY INFORMATION:

Title: TreasuryDirect Customer Feedback.

Abstract: This is a generic clearance to conduct various surveys, focus groups, and interviews among current and prospective TreasuryDirect customers. The aforementioned collections will assess the effectiveness and efficiency of existing products and services; obtain knowledge about the potential public audiences attracted to new products when introduced; and to measure awareness and appeal of efforts to reach audiences and customers.

Current Actions: New collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,250.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 12, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–22175 Filed 9–14–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Reporting Alternative Commitment Agreement (TRAC) for Use in the Food and Beverage Industry; the Tip Rate Determination Agreement (TRDA) for industries other than the food and beverage industry and the gaming industry; and Notice 2006–97.

DATES: Written comments should be received on or before November 14, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 317–5746, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Rate Determination Agreement (TRDA) for industries other than the food and beverage industry and the gaming industry.

OMB Number: 1545–1717.

Form Number: N/A.

Abstract: Announcement 2000–20, 2000–19 I.R.B. 977, and Announcement 2001–1, #2001–2 I.R.B. p. 277 contain information required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 18 hours, 58 minutes.

Estimated Total Annual Burden Hours: 1,897.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–22135 Filed 9–14–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8328

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap.

DATES: Written comments should be received on or before November 14, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 317–5746, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

OMB Number: 1545–0874.

Form Number: Form 8328.

Abstract: Internal Revenue Code section 4146(f) requires that an annual volume limit be placed on the amount of private activity bonds issued by each State. Code section 146(f)(3) provides that the unused amount of the private activity bonds for specific programs can be carried forward for 3 years depending on the type of project. In order to carry forward the unused amount of the private activity bond, an irrevocable election can be made by the issuing authority. Form 8328 allows the issuer to execute the carryforward election.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 13 hours, 13 minutes.

Estimated Total Annual Burden Hours: 132,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 30, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–22134 Filed 9–14–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1097–BTC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1097–BTC, Bond Tax Credit.

DATES: Written comments should be received on or before November 14, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Bond Tax Credit.

OMB Number: 1545–2197.

Form Number: Form 1097–BTC.

Abstract: Bond tax credits distributed by holders and issuers of tax credit bonds will be reported on this form. The form will be sent to taxpayers that received the distribution.

Current Actions: The paperwork burden associated with this form was recalculated.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 212.

Estimated Time per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 67.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–22133 Filed 9–14–16; 8:45 am]

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Part II

Department of Justice

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1302, et al.

Revision of Import and Export Requirements for Controlled Substances, Listed Chemicals, and Tableting and Encapsulating Machines, Including Changes To Implement the International Trade Data System; Revision of Reporting Requirements for Domestic Transactions in Listed Chemicals and Tableting and Encapsulating Machines; and Technical Amendments; Proposed Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1302, 1303, 1304, 1308, 1309, 1310, 1312, 1313, 1314, 1315, 1316, and 1321

[Docket No. DEA–403]

RIN 1117–AB41

Revision of Import and Export Requirements for Controlled Substances, Listed Chemicals, and Tableting and Encapsulating Machines, Including Changes To Implement the International Trade Data System; Revision of Reporting Requirements for Domestic Transactions in Listed Chemicals and Tableting and Encapsulating Machines; and Technical Amendments

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration is proposing to update its regulations for the import and export of tableting and encapsulating machines, controlled substances, and listed chemicals, and its regulations relating to reports required for domestic transactions in listed chemicals, gamma-hydroxybutyric acid, and tableting and encapsulating machines. In accordance with Executive Order 13563, the Drug Enforcement Administration has reviewed its import and export regulations and reporting requirements for domestic transactions in listed chemicals (and gamma-hydroxybutyric acid) and tableting and encapsulating machines, and evaluated them for clarity, consistency, continued accuracy, and effectiveness. The proposed amendments clarify certain policies and reflect current procedures and technological advancements. The amendments also allow for the implementation, as applicable to tableting and encapsulating machines, controlled substances, and listed chemicals, of the President's Executive Order 13659 on streamlining the export/import process and requiring the government-wide utilization of the International Trade Data System. This proposal additionally contains amendments that would implement recent changes to the Controlled Substances Import and Export Act (CSIEA) for reexportation of controlled substances among members of the European Economic Area made by the Improving Regulatory Transparency for New Medical Therapies Act. The proposal includes additional substantive and technical amendments.

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before October 17, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Management and Budget (OMB) on or before October 17, 2016.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–403" on all correspondence, including any attachments.

The Drug Enforcement Administration encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate an electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to RIN 1117–AB41/Docket No. DEA–403.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA or Administration) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference. The DEA specifically solicits written comments regarding the DEA's economic analysis of the impact of these proposed changes. The DEA requests that commenters provide detailed descriptions in their comments of any expected economic impacts, especially to small entities. Commenters should provide empirical data to illustrate the nature and scope of such impact.

Outline

I. Background and Purpose
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  2. Import and Export Declarations for Controlled Substances
  3. Import and Export Declarations and Notices for Listed Chemicals
  4. Import and Export Reports for Tableting and Encapsulating Machines; Reports for Domestic Transactions in Listed Chemicals, Gamma-Hydroxybutyric Acid, and Tableting and Encapsulating Machines
  5. Transshipments of Controlled Substances
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  7. Notifications of International Transactions by Brokers or Traders
  C. Purpose of Regulatory Action
II. Discussion of Technical Amendments and Proposed Significant Regulatory Changes
  A. Proposed Amendments Directly Associated With Implementation of the International Trade Data System
  1. Applications, Notices and Other Filings
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  2. Security
  3. Miscellaneous
  B. Proposed Amendments Indirectly Associated With Implementation of the International Trade Data System
  1. Terminology and Definitions
  2. Part 1302: Labeling and Packaging Requirements for Controlled Substances
  3. Part 1304: Records and Reports of Registrants
  4. Part 1308: Schedules of Controlled Substances
  5. Part 1309: Registration of Manufacturers, Distributors, Importers and Exporters of List I Chemicals
  6. Part 1310: Records and Reports of Listed Chemicals and Certain Machines
  a. *Mail Order Reporting for Ephedrine, Pseudoephedrine, Phenylpropanolamine, and Gamma-Hydroxybutyric Acid*
  b. *Listed Chemicals and Tableting and Encapsulating Machines*
  7. Part 1312: Importation and Exportation of Controlled Substances
  8. Reexportation of Controlled Substances—Including Implementation of section 4 of the Improving Regulatory Transparency for New Medical Therapies Act
  9. Part 1313: Importation and Exportation of List I and List II Chemicals
  10. Part 1316: Administrative Functions, Practices, and Procedures
  C. DEA Mailing Addresses
III. Regulatory Analyses

I. Background and Purpose

A. Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are known as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, and are collectively referred to as the "Controlled Substances Act" or "CSA" for the purpose of this action. The DEA publishes implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring an adequate supply is available for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and pursuant to 21 U.S.C. 812 (a) and (b), the current list of all scheduled substances is published at 21 CFR part 1308. Controlled substances generally include narcotics, stimulants, depressants, and hallucinogens that have a potential for abuse and physical and psychological dependence, as well as anabolic steroids. Listed chemicals are separately classified based on their use and importance to the illicit manufacture of controlled substances (list I or list II chemicals). 21 U.S.C. 802 (33)–(35).

Through the enactment of the CSA and its amendments, Congress has established a closed system of distribution making it unlawful to handle any controlled substance (manufacture, distribute, reverse distribute, dispense, conduct research, engage in narcotic treatment or maintenance, import, export, collect, conduct chemical analysis, dispose, or possess) or manufacture, distribute, import, or export any listed chemical except in a manner authorized by the CSA. *See e.g., Gonzales* v. *Raich,* 545 U.S. 1, 12–13 (2005) (stating "The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA. 21 U.S.C. §§ 841(a)(1), 844(a)."); H.R. Rep. No. 91–1444, pt. 1 at 3 (1970) (stating: "*Title II: Control and Enforcement.*— The bill provides for control by the Justice Department of problems related to drug abuse through registration of manufacturers, wholesalers, retailers, and all others in the legitimate distribution chain, and makes transactions outside the legitimate distribution chain illegal.").

In order to maintain this closed system of distribution, the CSA requires handlers of controlled substances, unless exempt from registration, to be registered with the DEA at each principal place of business or professional practice where controlled substances are manufactured, distributed, or dispensed. 21 U.S.C. 822. The CSA also requires persons who manufacture or distribute, or who propose to manufacture or distribute, list I chemicals to be registered at each principal place of business or professional practice, unless exempt. 21 U.S.C. 822; 21 CFR 1309.22. A separate registration is also required for each principal place of business where controlled substances or list I chemicals are imported or exported, unless exempt from registration. 21 U.S.C. 958. A "registrant" is any person who is registered pursuant to either section 303 or section 1008 of the CSA (codified at 21 U.S.C. 823 or 958).[1] 21 CFR 1300.01(b). Registrants are permitted to possess controlled substances and list I chemicals as authorized by their registration and must comply with the applicable requirements associated with their registration. 21 U.S.C. 822 and 958.

In contrast, a "regulated person" means "a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine or who acts as a broker or trader [2] for an international transaction [3] involving a listed chemical, a tableting machine, or an encapsulating machine." 21 U.S.C. 802(38). (Tableting machines and encapsulating machines are also commonly known as "pill presses" and "capsule fillers" respectively.) Regulated persons who engage in "regulated transactions," defined at 21 U.S.C. 802(39),[4] are subject to specific recordkeeping and reporting requirements pursuant to 21 U.S.C. 830, 971; 21 CFR part 1310. In addition, a person located in the United States who is a broker or trader for an international transaction in a listed chemical that is a regulated transaction shall, with respect to that transaction, be subject to all of the notification, reporting, recordkeeping, and other requirements placed upon exporters of listed chemicals. 21 U.S.C. 971(e).

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[1] Unless otherwise noted, all references to registrant(s) in this preamble include persons exempt from DEA registration and persons not registered with the DEA as an importer or exporter who are authorized to perform importing or exporting activities as a coincident activity of their research or chemical analysis registration in accordance with 21 CFR 1301.13(e).

The CSA grants the Attorney General authority to promulgate rules and regulations relating to: the registration of controlled substance and list I chemical handlers; control of the manufacture, distribution, and dispensing of controlled substances; control of the manufacture and distribution of listed chemicals; maintenance and submission of records and reports; and for the efficient execution of her statutory functions. 21 U.S.C. 821–822, 825, 827–831, 871, 952, 954, 956, 958, 971. The Attorney General is further authorized by the CSA to promulgate rules and regulations relating to the registration and control of importers and exporters of controlled substances or listed chemicals. 21 U.S.C. 958(f). The Attorney General has delegated these authorities to the Administrator of the DEA, who in turn redelegated many of these authorities to the Deputy Administrator of the DEA and the Deputy Assistant Administrator of the DEA Office of Diversion Control. 28 CFR 0.100 *et seq.*

Within the DEA, the Office of Diversion Control is the strategic focus area that carries out the mandates of the CSA to ensure that adequate supplies of controlled substances and listed chemicals are available to meet legitimate domestic medical, scientific, industrial, and export needs. The Office of Diversion Control carries out the mission of the DEA to prevent, detect, and eliminate the diversion of these substances into the illicit drug market. Activities in support of the Office of Diversion Control and its mission include: Determination of program priorities; field management oversight; coordination of major investigations; drafting and promulgating regulations; the design and proposal of national legislation; advice and leadership on State legislation/regulatory initiatives; oversight of the importation and exportation of tableting and encapsulating machines, controlled substances, and listed chemicals; establishment of national drug production quotas; activities related to drug scheduling and compliance with international treaty obligations; the design and execution of diplomatic missions; computerized monitoring and tracking of the distribution of certain controlled substances; planning and allocation of program resources; and liaison efforts with industry and their representative associations as well as to the DEA's regulatory and law enforcement counterparts at the federal, State, tribal, and local levels.

B. Current Import/Export Practices and Regulatory Framework

Under the CSA, a controlled substance, listed chemical, or tableting or encapsulating machine is considered imported if it is either brought into the customs territory from a place that is outside the customs territory but within the United States (*e.g.*, a shipment from an insular possession such as Guam into one of the 50 States) or brought into the United States from any other place (*e.g.*, a shipment from India into one of the 50 States or into an insular possession such as American Samoa). 21 U.S.C. 951, 952; *see also* 21 U.S.C. 802(39), 830(a). For purposes of the CSA, the "customs territory of the United States" includes only the 50 States, the District of Columbia, and Puerto Rico. 21 U.S.C. 951(a)(2). In contrast, an export of a controlled substance, listed chemical, or tableting or encapsulating machine occurs when that item is taken out of, or removed from, the United States, which, pursuant to the definition at 21 U.S.C. 802(28), includes "all places and waters, continental or insular, subject to the jurisdiction of the United States." *See* 21 U.S.C. 802 (38) and (39), 830(a), 953(a).

The DEA regulations are drafted to be consistent with the meaning of "import" and "export" under the CSA, which is broader in scope than the meaning of those terms as used in the U.S. Customs and Border Protection's (CBP) regulations. The DEA regulations are also drafted to take into account the authority of customs officials of U.S. territories to enforce the CSA. The CSA and DEA regulations prohibit any person from importing or exporting any controlled substance or list I chemical unless that person is registered with the DEA (or exempt from registration). 21 U.S.C. 957. In addition, these substances may only be imported and exported if specific statutory criteria are met. For instance, schedule II controlled substances may be imported to the extent that the Attorney General finds such importation is "necessary to provide for the medical, scientific, or other legitimate needs of the United States * * * in any case in which the Attorney General finds that such controlled substance is in limited quantities exclusively for scientific, analytical, or research uses," 21 U.S.C. 952(a)(2)(C), or in other limited circumstances. Schedule II narcotic drugs may be exported if, *inter alia*, "substantial evidence is furnished to the Attorney General by the exporter that (A) the narcotic drug is to be applied exclusively to medical or scientific uses within the country of import, and (B) there is an actual need for the narcotic drug for medical or scientific uses within such country." 21 U.S.C. 953(a)(4). Depending on the circumstances surrounding the proposed import or export, in most cases the CSA and implementing regulations require importers and exporters, in advance of the import or export, to obtain a permit from the DEA, or to report the activity to the DEA by filing a declaration. 21 U.S.C. 952–953, 971; 21 CFR 1312.11, 1312.21, 1313.12, 1313.21.

1. Import and Export Permits for Controlled Substances

Registrants (and those exempt from registration) [5] who wish to import a controlled substance listed in schedule I or II; any narcotic drug listed in schedule III, IV, or V; any non-narcotic drug in schedule III that has been specifically designated by regulation in 21 CFR 1312.30; or any non-narcotic substance listed in schedule IV or V that is also listed in schedule I or II of the Convention on Psychotropic Substances, 1971, must apply (on DEA Form 357) for and be granted a permit from the DEA prior to the import. 21 U.S.C. 952; 21 CFR 1312.11, 1312.12, 1312.13. Similarly, registrants who wish to export any schedule I or II controlled substance; any narcotic drug in schedule III or IV; any non-narcotic drug in schedule III that has been specifically designated by regulation in 21 CFR 1312.30; or any non-narcotic substance listed in schedule IV or V that is also listed in schedule I or II of the Convention on Psychotropic Substances, 1971, must apply (on DEA Form 161 or 161R) for and be granted a permit from the DEA prior to the export. 21 U.S.C. 953; 21 CFR 1312.21, 1312.22, 1312.23. The DEA currently issues permits in sextuplet for imports and in septuplet for exports, serially numbered, on special paper. 21 CFR 1312.13(e), 1312.23(e). The copies are distributed among the importer, the foreign exporter, the foreign government authority, CBP, and the DEA in accordance with §§ 1312.14 and 1312.24. Permits expire on the date specified on the permit, but in no event shall the date be more than six months after the date the permit is issued. 21 CFR 1312.16(b), 1312.25. Unused permits are required to be returned to the DEA for cancellation. *Id.*

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[2] A "broker" and "trader" are persons that assist in arranging an international transaction in a listed chemical by: negotiating contracts; serving as an agent or intermediary; or bringing together a buyer and seller, a buyer and transporter, or a seller and transporter. 21 U.S.C. 802(43).

[3] An "international transaction" is a transaction that involves "the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates." 21 U.S.C. 802(42).

[4] The CSA defines a "regulated transaction" as being: (1) with certain enumerated exceptions, "a distribution, receipt, sale, importation, or exportation of, or an international transaction involving shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical;" and (2) "a distribution, importation, or exportation of a tableting machine or encapsulating machine." 21 U.S.C. 802(39).

[5] As discussed in note 1, unless specifically noted otherwise, discussion of "registrants" also includes persons exempt from registration for purposes of the preamble portion of this notice.

2. Import and Export Declarations for Controlled Substances

Those non-narcotic controlled substances listed in schedule III, IV, or V, that are not subject to the requirement of a permit, may be imported or exported if the registrant files a controlled substances import/export declaration (on DEA Form 236) with the DEA. 21 U.S.C. 952(b), 953(e); 21 CFR 1312.11(b), 1312.21(b). Likewise, narcotic controlled substances in schedule V may be exported if the registrant files a controlled substances export declaration. 21 U.S.C. 953(e); 21 CFR 1312.21(b). Currently, the declaration must be executed in quintuplicate and Copy 4 shall be filed with the DEA not later than 15 calendar days prior to the proposed date of importation or exportation. 21 CFR 1312.18, 1312.19, 1312.27, 1312.28. The five copies of the import/export declaration (DEA Form 236) are distributed among the importer, the foreign shipper, the governmental authority of the foreign country, CBP, and the DEA in accordance with § 1312.19 or § 1312.28.

3. Import and Export Declarations and Notices for Listed Chemicals

The CSA and DEA regulations have established a system of recordkeeping and reporting requirements that provide the DEA with a mechanism to track international movement of listed chemicals in order to prevent their being diverted for use in the clandestine manufacture of controlled substances. The CSA generally requires regulated persons who import or export a listed chemical to report the transaction to the DEA, as delegated by the Attorney General, at least 15 days in advance. 21 U.S.C. 971(a). This requirement is modified for regulated persons engaging in a transaction with a "regular customer" and for regulated persons designated as "regular importers." 21 U.S.C. 802 (36) and (37), 971(b); 21 CFR 1313.15, 1313.24. The DEA has the obligation to examine the report in order to determine if the shipment is legitimate and that the chemical will not be diverted into the illicit manufacture of controlled substances, pursuant to the authority granted in 21 U.S.C. 971 (c) and (d).

For listed chemicals at or above thresholds set forth in § 1310.04(f) and listed chemicals for which no threshold has been established as identified in § 1310.04(g), regulated persons may import or export list I or II chemicals by filing a listed chemical import declaration (on DEA Form 486/486A) or an export declaration (on DEA Form 486) with the Administration not later than 15 calendar days prior to the date of the proposed importation or exportation (unless DEA has waived such advance reporting through regulation). 21 CFR 1313.12, 1313.13, 1313.21, 1313.22. The United States importer or exporter must include on their declaration the name and address of each person to whom the listed chemical(s) will be transferred (*i.e.,* the transferee, consignee, and intermediate consignees), including the quantity. 21 U.S.C. 971(d); 21 CFR 1313.13(c), 1313.22(c). For an importer, the transferee is the person to whom the importer transfers the listed chemical (*i.e.,* the downstream customer). For an export from the United States, the transferee/consignee is the foreign importer. For a broker or trader, the transferee/consignee is the foreign customer purchasing the listed chemicals. Importers are also required to list their foreign supplier on their declaration. The DEA Form 486/486A must be executed in triplicate. 21 CFR 1313.13, 1313.22. The three copies of the listed chemical import/export declaration are distributed among the importer/exporter, CBP, and the DEA in accordance with §§ 1313.14 and 1313.23.

If, after submission of the initial DEA Form 486/486A, the importer, exporter, broker or trader will not be transferring the listed chemical to the transferee named on the declaration, or if the quantity of listed chemical to be imported, exported, or transferred is greater than the quantity originally indicated on the declaration, the importer, exporter, broker or trader must file an amended DEA Form 486/486A reporting the change. 21 CFR 1313.16(b), 1313.26(b), 1313.32(d). Even if an importer or exporter did not have to file an initial notification—either because he or she is a regular importer selling to a regular customer, or an exporter selling to a regular customer—if the newly arranged spot market sale is not to a regular customer, the importer or exporter must file an advance notice 15 days prior to transferring the chemical to a new customer. 21 CFR 1313.16, 1313.26.

Within 30 days after an import or export of a listed chemical has occurred, the importer/exporter must file with the DEA a return declaration containing the particulars of the transaction, including the date, quantity, chemical, container, name of transferees, and any other information as the Administration may specify. 21 U.S.C. 971(g); 21 CFR 1313.17(a), 1313.27(a). An importer may file a single return declaration including the particulars of both the importation and the distribution. 21 CFR 1313.17(a). If the importer has not distributed all chemicals imported by the end of the initial 30-day period, the importer must file supplemental return declarations every 30 days until the distribution or other disposition of all chemicals imported under the declaration or amended declaration have been accounted for. 21 CFR 1313.17(a). If an import/export for which a declaration has been filed does not in fact take place, the importer/exporter must file an amended declaration notifying the DEA that the transaction did not in fact occur. 21 CFR 1313.17(b), 1313.27(b).

4. Import and Export Reports for Tableting and Encapsulating Machines; Reports for Domestic Transactions in Listed Chemicals, Gamma-Hydroxybutyric Acid, and Tableting and Encapsulating Machines

Regulated persons who engage in a regulated transaction involving a listed chemical, a tableting machine, or an encapsulating machine must keep records of the transaction and file reports in accordance with §§ 1310.03(a), 1310.04, and 1310.05. Regulated persons who import or export a tableting machine or encapsulating machine are not required to obtain prior approval from the DEA for the transaction, but they are required to file a report with the DEA of any importation or exportation of a tableting or an encapsulating machine on or before the date of importation or exportation. 21 U.S.C. 830(b)(1)(D); 21 CFR 1310.05(c), 1310.06 (e) and (f).

Regulated persons who engage in an export transaction that involves ephedrine, pseudoephedrine, phenylpropanolamine, or gamma-hydroxybutyric acid (including drug products containing these chemicals or controlled substance) and use or attempt to use the U.S. Postal Service or a private or commercial carrier are required to file monthly reports of these transactions in accordance with §§ 1310.03(c), 1310.05(e), 1310.06(i), and 1314.110; *see also* § 1310.04. The report must be submitted to the Import/Export Unit of the DEA on company letterhead, signed by the person authorized to sign the registration application forms on behalf of the registrant. 21 CFR 1310.05(e). Regulated persons who engage in any domestic regulated transaction with a tableting machine or an encapsulating machine, including those following an import of such machines, must orally report, when possible, and subsequently file written reports with the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located. 21 CFR 1310.05 (a)(4) and (b).

Regulated persons are required to report regulated transactions involving extraordinary quantities of a listed chemical, uncommon method of payment or delivery, or other circumstances that the regulated person believes may indicate that the listed chemical will be used in violation of the CSA and its implementing regulations. 21 CFR 1310.05 (a)(1) and (b). Regulated persons must also report the unusual or excessive loss or disappearance of a listed chemical under their control, 21 CFR 1310.05 (a)(3) and (b), and any proposed regulated transaction with a person whose description or identifying characteristic the Administration has previously provided. 21 CFR 1310.05(a)(2).

5. Transshipments of Controlled Substances

The transshipment of controlled substances through the United States is governed by 21 U.S.C. 954. Persons seeking to transship or transfer for immediate exportation schedule I controlled substances within the United States must apply for a permit at least 30 days in advance of the expected transshipment or, in the case of an emergency, as soon as practicable, and receive a transshipment permit from the DEA before the transshipment may occur. 21 CFR 1312.31. Controlled substances listed in schedule II, III, or IV may be so transshipped or transferred if 15 days advance written notice is provided to the DEA in accordance with 21 CFR 1312.32. 21 U.S.C. 954(2). A specific DEA Form is not required for transshipments, however the application for prior written approval (for schedule I substances) and the advance notice (for schedule II, III, or IV substances) must conform with very specific requirements outlined in § 1312.31 (b) and (c). *See* 21 CFR 1312.32(b).

6. Transshipments of Listed Chemicals

As stated above, the CSA generally requires regulated persons who import or export a listed chemical to report the transaction to the DEA, as delegated by the Attorney General, at least 15 days in advance. 21 U.S.C. 971(a). This requirement is modified for regulated persons engaging in a transaction with a "regular customer" and for regulated persons designated as "regular importers." 21 U.S.C. 802 (36) and (37), 971(b); 21 CFR 1313.15, 1313.24. No waiver of the 15-day advance notice is permitted under 21 CFR 1313.31(d) for importations for transshipment purposes of threshold or greater quantities of listed chemicals. Regardless of whether the shipment is a direct export or a transshipment, the DEA has the obligation to examine the report in order to determine if the shipment is legitimate and that the chemical will not be diverted into the illicit manufacture of controlled substances.

Persons seeking to transship or transfer listed chemicals in a quantity that meets or exceeds the threshold amounts found in § 1310.04(f) must provide advance notification to the DEA not later than 15 days prior to the proposed date that the listed chemical will transship or transfer through the United States. 21 CFR 1313.31. The notification must contain the information that is required by the DEA Form 486, but it is not required to be submitted to DEA using the DEA Form 486.

7. Notifications of International Transactions by Brokers or Traders

Brokers or traders engaging in international transactions involving listed chemicals which meet or exceed the threshold amounts found in § 1310.04 must provide notification to the DEA not later than 15 days in advance of the transaction by filing DEA Form 486. 21 CFR 1313.32.

Within 30 days after an international transaction has occurred, the broker or trader must send the DEA a return declaration containing the particulars of the transaction, including the date, quantity, chemical, container, name of transferees, and any other information as the Administration may specify. 21 CFR 1313.35(a). If an international transaction for which a DEA Form 486 has been filed does not in fact take place, the broker or trader must file an amended DEA Form 486 notifying the DEA that the transaction did not in fact occur. 21 CFR 1313.35(b).

C. Purpose of Regulatory Action

The DEA is proposing to update its regulations regarding the import and export of tableting and encapsulating machines, controlled substances, and listed chemicals. In accordance with Executive Order 13563, the DEA has reviewed its import and export regulations and reporting requirements for domestic transactions involving listed chemicals (and gamma-hydroxybutyric acid) and tableting and encapsulating machines, and evaluated them for clarity, consistency, continued accuracy, and effectiveness. The amendments would codify current practices and incorporate current procedures and technological advancements and allow for implementation of the President's Executive Order on streamlining the export/import process and requiring Government-wide utilization of the International Trade Data System (ITDS). Section 3 of the President's Executive Order 13659 of February 19, 2014, "Streamlining the Export/Import Process for America's Businesses," directs participating agencies to have capabilities, agreements, and other requirements in place to allow electronic filing through ITDS and supporting systems of data and other relevant documents (exclusive of applications for permits, licenses, or certifications) required for imported and exported goods. Businesses are able to transmit their import and export data according to the Electronic Data Interchange (EDI), an electronic communication framework providing standards for exchanging data via any electronic means. Data transmitted through EDI links to the Automated Commercial Environment (ACE), which serves as the single window for CBP and participating agencies. For purposes of this notice, the DEA will describe EDI, ACE, and any successor system to ACE, by the statutory term for the single window goal, which is ITDS.

As discussed above, current DEA regulations specifically require applications for permits, and declarations and other required notices and reports to be filed in paper form, or by electronic means in some circumstances. The DEA must amend its regulations in order to integrate DEA procedures related to the importation and exportation of tableting and encapsulating machines, controlled substances, and listed chemicals with the ITDS.

Because the ITDS excludes applications for permits, licenses, or certifications, the ITDS single window will not be used by DEA registrants, regulated persons, or brokers or traders applying for permits or filing import/export declarations, notifications or reports with the DEA. The DEA import/export application and filing processes will continue to remain separate from (and in advance of) the ITDS single window. Entities will continue to use the DEA application and filing processes; however, the processes will be electronic rather than paper. After DEA's approval or notification of receipt as appropriate, the DEA will transmit the necessary information electronically to the ITDS and the registrant or regulated person so that customs officers can validate importations and exportations subject to DEA regulations.

Because of the requirement that regulated persons submit reports of regulated transactions in tableting machines and encapsulating machines to the DEA, the DEA also proposes to require such domestic regulated transaction reports to be submitted through the DEA Office of Diversion Control secure network application, in addition to import and export regulated transactions. Mandatory reporting requirements for domestic regulated transactions are included as part of this proposal because it allows for the DEA to create, at one time, an efficient, streamlined reporting structure of regulated activities applicable to tableting and encapsulating machines. Additional information related to the proposed mandatory electronic reporting requirements for tableting and encapsulating machines is discussed in section II, B, 6, b of this document.

This proposal additionally contains amendments that would implement section 4, Re-exportation Among Members of the European Economic Area, of the Improving Regulatory Transparency for New Medical Therapies Act, Public Law 114–89, which was signed into law on November 25, 2015. Section 4 amended section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953) by making changes to paragraph (f) and adding paragraph (g) that allows for reexportation of controlled substances among members of the European Economic Area. Additional information related to the proposed revisions to implement section 4 of the Improving Regulatory Transparency for New Medical Therapies Act is discussed in section II, B, 8 of this document.

This proposal also includes technical and stylistic changes to several regulations to clarify and simplify the language and to further the goals of the President's memorandum on Transparency and Open Government. 74 FR 4685, Jan. 26, 2009.

II. Discussion of Technical Amendments and Proposed Significant Regulatory Changes

A. Proposed Amendments Directly Associated With Implementation of the International Trade Data System

1. Applications, Notices, and Other Filings

The principal changes necessary to implement the ITDS are also those that will allow the efficient and standardized electronic exchange of required information.

To transmit data electronically to the ITDS, the first global change that the DEA is proposing is to mandate the electronic submission of all applications and other required filings and reports (*e.g.,* declarations, notices, returns) associated with the importation or exportation of tableting and encapsulating machines, controlled substances, and listed chemicals. 21 U.S.C. 958(f). However, the DEA will not require electronic submission of transshipment data. (The electronic application and filing process is not feasible in such circumstances because foreign IP addresses are blocked by the Department of Justice's firewall and are prevented from accessing the DEA Office of Diversion Control secure network application.) Accordingly, the vast majority of persons subject to the CSA requirements and DEA regulations pertaining to imports and exports would be required to make all DEA-required submissions through the DEA Office of Diversion Control secure network application. The DEA will provide customs information to validate importations subject to DEA regulations, and this change will enable the DEA to analyze and electronically transmit necessary information to the ITDS quickly and accurately. The DEA Office of Diversion Control secure network application will be accessed by DEA registrants and regulated persons through the DEA Office of Diversion Control Web site. Security of the new electronic system is discussed in section II, A, 2 of this document under the heading "Security." In addition, importers and exporters would obtain information regarding approved permits and DEA's receipt of completed declarations, notices, returns, and reports through the same DEA Office of Diversion Control secure network application. If importers and exporters were permitted to continue submitting paper documents, the DEA would have to manually transcribe the paper information into an electronic format for transmission to the ITDS. Such an intermediary step would cause unnecessary delay and is subject to error. In addition to providing for electronic filing of information to CBP through ITDS and reducing errors, electronic applications, approvals, declarations, notices, and reports strengthen the DEA's ability to monitor and prevent unauthorized imports and exports and will enhance information sharing between CBP/customs services of Insular Areas and the DEA.[6] Electronic processing is expected to help the DEA identify unauthorized or suspicious shipments prior to import or export, and diversion of in-transit shipments being exported or imported, by improving the quality and timeliness of data review and transaction authorization.

For the foregoing reasons, the DEA is proposing amendments to its regulations that would authorize electronic submission of data, and would make the procedure mandatory over paper in most circumstances. 21 U.S.C. 958(f). The use of electronic applications and filings is consistent not only with the requirements of Executive Order 13659, but also with the general principles outlined in the Government's Open Data Policy which requires agencies to collect or create information in a way that supports downstream information processing and dissemination.[7] The Open Data Policy states that information should be collected electronically by default. As discussed in greater detail in the Regulatory Analyses section of this document, the DEA believes that the regulated community should be able to easily adapt to this new requirement with minimal effort or cost.

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[6] For purposes of this preamble, "customs services of Insular Areas" means the governmental authority/authorities (federal or insular), charged with enforcement of the customs laws of the United States/Insular Area.

If an importer/exporter tries to submit an application, declaration, notice, report, or other required submission through the DEA Office of Diversion Control secure network application but does not complete all of the required fields or enters key data that is not valid or is inaccurate (*e.g.*, unknown port or erroneous drug code) with the submission, the DEA Office of Diversion Control secure network application will automatically alert the filer to the fact that information is missing or does not meet the validation requirements.

Applications, declarations, notices, and reports filed through the DEA Office of Diversion Control secure network application would generally not be deemed filed until the DEA assigns a single-use, randomly-generated, unique identifier. This identifier would be referenced as the "transaction identification number," except for permits, where the transaction identification number would continue to be called the "permit number" to correspond with current business practice. A permit number would be assigned once the DEA has approved an application for a permit. A transaction identification number would be assigned once the DEA reviews a declaration, notice, or other filing for completeness, and it is accepted for filing. Although issuance of a transaction identification number would signify that the declaration, notice, or other filing has been reviewed for completeness, the issuance of the transaction identification number does not mean that such filing has been "approved" by the DEA. The DEA reserves the right to cancel an import or export permit or declaration for cause and suspend shipments of listed chemicals in accordance with applicable regulations. Currently, the DEA assigns a Web Tracking Number to each filing submitted electronically to the DEA and would continue to do so under this proposal. However, unlike the proposed transaction identification number, the Web Tracking Number is assigned automatically upon submission to the DEA; the transaction identification number would be assigned only after the DEA has reviewed the filing for completeness.

Instead of distributing "copies," registrants and other importers/exporters, once logged into the DEA Office of Diversion Control secure network application through authenticated access, would be able to use the assigned permit or transaction identification number to access the "official record" of the filing from the DEA Office of Diversion Control secure network application. The registrant or other importer/exporter would then be responsible for forwarding official record information to their broker or any other of their agents needing the information contained therein to complete the release process through customs. Permit numbers and transaction identification numbers are discussed in more detail later in this document for each transaction category.

Declarations, permits, and most other filings with DEA would not be deemed filed until a transaction identification number (or permit number) is issued by the DEA. The transaction identification number would be issued by the DEA after any necessary corrections are complete. The DEA considered, but ultimately did not choose to propose, a specific timeframe in which transaction identification numbers (and permit numbers) will be issued because of concern of instances that require longer-than-average review and processing times that can result from any number of circumstances, not all of which are foreseeable. However, the DEA does not have reason to believe that by not having a stated timeframe that there will be any significant impact on import and export activities.

The DEA is proposing to have the option of deeming a submission filed on the date submitted, if a listed chemical import or export declaration, or other filing was complete at the time of filing and no additional follow-up action was required, instead of on the date the transaction identification number was issued. However, if a chemical importer or exporter made a submission on the last day that would comply with the reporting deadline, and DEA review subsequently found the submission not to be complete, then he or she would be in violation of the regulation. The requirement to submit applications, declarations, notices, reports, and other filings includes the duty that such filings be complete. If an importer or exporter has concerns that their information may not be complete they would be able to contact the DEA in advance of the submission to ask questions and/or submit the filing in advance of the deadline to ensure that if changes or additional information is required that those changes can be made before the established 15-day filing deadline.

In association with this change, the DEA is proposing to globally amend its import and export regulations to provide that expiration periods, filing deadlines, and other timed action dates are to be generally calculated as "calendar days" (*i.e.*, including weekends and holidays) unless otherwise noted in a regulation (*e.g.*, in the case of amendments). This change corresponds with business rule policies that will be built into the DEA's electronic systems of records for the impacted applications, notices, and other filings that will be required to be electronically submitted to the DEA.

(a) Import and Export Permits for Controlled Substances

The DEA proposes to incorporate the mandatory electronic application requirements for controlled substance imports and exports into §§ 1312.12 and 1312.22. Applicants for a permit to import or export controlled substances would be required to access, complete, and submit the DEA application for import, application for export, or application for reexport, as appropriate, to the DEA through the DEA Office of Diversion Control secure network application. This requirement would also be incorporated into a new § 1312.03, which references applicable forms for part 1312, and would state that such forms are electronic.

Other than for transshipments, current DEA regulations requiring import and export permits to be issued in multiples via paper form would be eliminated in favor of regulations making such information available via digital means. The DEA would continue to issue original permits under existing practices, and would still transmit the original permit to the pertinent foreign competent national authorities (CNAs); however, the DEA would eliminate issuing the other copies. The DEA proposes that "copies" currently issued by the DEA to registrants would only be accessible through the DEA Office of Diversion Control secure network application. The DEA would assign each approved permit a permit number (a unique identifier). Once the permit has been issued, registrants would be able to use the assigned permit number to access the digital copy of the permit, or the "official record of the permit." Corresponding changes would be made throughout DEA import/export regulations. These changes will reference the data downloads from the secure network application by the registrant as an "official record of the permit" instead of a "copy." These changes are proposed in §§ 1312.13, 1312.14, 1312.23, and 1312.24.

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[7] OMB Memorandum M–13–13, *Open Data Policy—Managing Information as an Asset*, available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf*.

The DEA proposes to amend its import/export regulations to describe the procedures relating to amendments following issuance of an import or export permit. The DEA is proposing to revise §§ 1312.16 and 1312.25 to clearly specify how and under what conditions controlled substance import and export permits may be amended or cancelled after issuance and when a new permit is required instead of an amendment. Registrants would submit a request to amend or cancel an application for an import or export permit, amend an issued import or export permit, or request for a cancelation of an issued import or export permit to the Administration through the DEA Office of Diversion Control secure network application. Return information on imports and exports may not be amended.

Consistent with current practice, importers and exporters would continue to be able to request an amendment to a permit for the following data fields: The National Drug Control number, description of the packaging, or trade name of the product, so long as the description is for the same basic class of controlled substance(s) as in the original permit; the proposed port of entry or export; the proposed date of import or export;[8] the method of transport; any registrant notes; and the justification entered by the importer or exporter for why an import or export is needed to meet the medical, scientific, or other legitimate needs of the United States or foreign jurisdiction. The DEA allows amendments to these fields as these are areas that may be easily mis-keyed or subject to change as part of the normal import and export business practice. While the data contained in these fields is important to determining the risk of diversion and the tracking of controlled substances through the closed system of distribution, the DEA believes that the Administration is able to enforce the CSA and uphold U.S. obligations under international drug control treaties while potentially limiting burden on industry by allowing these fields to be amendable.

Consistent with current practice, importers and exporters would continue to generally be allowed to amend the base weight of controlled substance(s) listed on their permit prior to the start of an import or export transaction (*i.e.,* prior to shipment). However, also consistent with current practice, exporters would not be allowed to exceed the total base weight of controlled substance(s) listed on the corresponding foreign permit. Also consistent with current practice, neither would exporters be allowed to exceed the strength of a controlled substance product if product strength information has been included on the import permit issued by the foreign competent national authority. Consistent with current § 1312.15(a), importers would continue to be allowed to request an amendment to the quantity of controlled substances specified on an import permit once a shipment has arrived at the U.S. customs port of entry if the increase in the amount of controlled substance to be imported is less than 1% of that listed on the issued import permit. Importers and exporters need not request an amendment for the sole purpose of decreasing the amount authorized.

Consistent with current practice, importers and exporters would continue to be able to request that an import or export permit be amended to remove a controlled substance. However, importers and exporters would no longer be able to amend permits to add a new controlled substance, replace the name of a controlled substance with a different controlled substance, or amend the controlled substance content of a drug or preparation. Instead, importers and exporters who needed to make changes to any of these fields would need to cancel the existing permit and apply for a new permit. The DEA understands that sometimes the incorrect controlled substance is identified on the permit application due to clerical error, for example because a similar item was selected from the drop-down selection in the DEA Office of Diversion Control secure network application that was located near the correct item. However, the DEA has closely considered this issue and ultimately determined that because the listed controlled substance proposed to be imported or exported is such a critical element of determining whether or not a permit should be issued and, if issued, the amount allowed to be imported or exported, this element should not be amendable. As stated elsewhere in this preamble, the DEA reminds importers and exporters that the duty to file reports and other documents with the DEA includes the duty that these filings be complete and accurate.

Similarly, in a change from current practice, the DEA is proposing to cease allowing exporters to amend foreign permit information on permit applications and issued permits. The DEA understands that sometimes, especially in the case of less experienced exporters, the incorrect foreign permit number is entered onto the permit application. This is often the result of numbers being transposed or a different number on the foreign permit being entered instead of the actual permit identification number. However, similar to the controlled substance identified on the permit, the DEA has closely considered this matter and ultimately determined that, because the authorization from the foreign competent national authority is such a critical element in determining whether a permit can be issued and the amount of the controlled substance to be exported, this element should not be amendable. As stated above and elsewhere in this document, the DEA reminds importers and exporters that the duty to file reports and other documents with the DEA includes the duty that these filings be complete and accurate.

Consistent with current practice, importers and exporters would not be able to request an amendment to a permit for changes to the importer or exporter's name (as it appears on their DEA certificate of registration) or the name of the foreign importer or exporter. The DEA considers the name of the foreign importer or exporter to be a key factor in determining associated risks of the diversion of controlled substances and subsequently whether or not to issue an import or export permit. Therefore, these fields would not be amendable.

However, also consistent with current practice, as stated above, the DEA would continue to allow importers and exporters to amend any additional associated company names they are DBA (doing business as) that they wish to have included in the notes section of the permit. The only change from current practice is that such amendments would be required to be made through the DEA Office of Diversion Control secure network application.

Importers and exporters would be required to make an official request through the DEA Office of Diversion Control secure network application for an amendment. Supplementary information submitted by an importer or exporter through the DEA Office of Diversion Control secure network application would not automatically trigger the amendment process. An amendment would have no effect on the date of expiration of the permit; an amended import or export permit would have the same expiration date as the originally issued permit. Return information would not be allowed to be amended. Importers and exporters would be able to request that an issued import or export permit be canceled provided that no shipment has yet been made.

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[8] The DEA is proposing to make global changes to DEA regulations to change usage, where applicable, of "import" and "export" to reference the date of release by customs officers for purposes of DEA recordkeeping and reporting requirements.

Under proposed § 1312.16(a)(5), registrants would be required to submit all requests for an amendment that would affect the total base weight of each controlled substance, other than those submitted in accordance with § 1312.15(a), at least three business days in advance of the date of release by a customs officer. Three business days are the minimum amount of time that the DEA needs to review this type of requested amendment, approve or deny the request, and transmit the applicable data to the ITDS. All other requests for amendment would be required to be submitted to the DEA at least one business day before the date of release by a customs officer at the port of entry. One business day is the minimum amount of time that the DEA needs to review the requested amendment, approve or deny the request, and transmit the applicable data to the ITDS.

For the reasons discussed above, the DEA is also proposing mandatory electronic reporting of return information for controlled substances imported or exported under permit procedures. The requirement of return information for imports and exports under permit procedure is discussed in greater detail in section II, B, 1 of this proposal under the heading "Terminology and Definitions."

(b) Import and Export Declarations for Controlled Substances

The DEA proposes to incorporate the mandatory electronic filing of DEA import declarations and DEA export declarations for controlled substances with the DEA into §§ 1312.18 and 1312.27. This requirement would also be incorporated into a new § 1312.03 which would reference a list of applicable forms for part 1312, and will state that the declaration forms are electronic. This information is currently listed multiple times in the applicable regulations. Consolidating this information into one section will make it easier for registrants to understand and comply.

Consistent with current requirements, controlled substance declarations would be required to be filed at least 15 calendar days in advance of the antipcated date of release by a customs officer at the port of entry or port of export. 21 CFR 1312.18(b), 1312.27(a). Under proposed revised §§ 1312.18(b) and 1312.27(a), controlled substance declarations would not be deemed filed until the Administration issues a transaction identification number. The DEA proposes to allow registrants to proceed with the import or export transaction as soon as the transaction identification number has been issued, regardless of whether 15 calendar days have elapsed since its issuance. The 15-day advance notification period currently required by DEA regulations is now used to review notifications. Under this proposal, that review period would occur prior to the issuance of the transaction identification number. Therefore, the DEA would no longer need additional processing time after the issuance of the transaction identification number. Therefore under this proposal, importers of controlled substances under declaration procedures would more closely align with import procedures under permit procedures in regard to timing as to when they may proceed with the transaction. The DEA proposes to retain the 15-day-advance time period to ensure enough time for the DEA to review the submission for completeness and conduct any necessary follow-up prior to the import/export transaction. As discussed above, transaction identification numbers would be single-use identifiers, unique to a specific communication or transaction (*e.g.*, a notice, filing, report, application, etc.), signifying that a communication has been received, reviewed, and accepted. While current DEA regulations do not require confirmation of receipt from the DEA prior to importation or exportation pursuant to a declaration, the proposal to assign a transaction identification number is consistent with the DEA's current practice for declarations submitted online. Currently, the DEA assigns a Web Tracking Number to each declaration when it is submitted and accepted. However, unlike the proposed transaction identification number, the Web Tracking Number is assigned automatically upon submission to the DEA; the transaction identification number would be assigned only after the DEA has reviewed the filing for completeness. The proposed regulatory codification of the issuance of a transaction identification number is designed to ensure that electronically submitted declarations are indeed received by the DEA, are completed, and can be appropriately tracked and monitored; to streamline the declaration filing process; and to eliminate duplicate filings. Current DEA regulations requiring declarations to be completed in triplicate would be eliminated.

The DEA proposes to amend its import/export regulations to describe the procedures relating to amendments following the filing of a controlled substance import or export declaration with implementation of the ITDS. The DEA proposes changes to §§ 1312.18(f) and 1312.27(e) to clearly specify how and under what conditions controlled substance import and export declarations may be amended or cancelled after having been filed and when a new declaration is required instead of an amendment. Registrants would submit a request to amend or cancel a filed declaration to the Administration through the DEA Office of Diversion Control secure network application. Return information may not be amended.

Consistent with current practice, importers and exporters would continue to be able to amend a declaration for the following data fields: The National Drug Control number, description of the packaging, or trade name of the product, so long as the description is for the same basic class of controlled substance(s) as in the original declaration; the proposed port of entry or export; the anticipated date of release by a customs officer at the port of entry or port of export; the method of transport; any registrant notes; and the justification entered by the importer or exporter for why an import or export is needed to meet the legitimate scientific or medical needs of the United States or foreign jurisdiction. The DEA allows amendments to these fields as these are areas that may be easily mis-keyed or subject to change as part of the normal import and export business practice. While the data contained in these fields is important to the tracking of controlled substances through the closed system of distribution, the DEA believes that the Administration is able to enforce the CSA and U.S. obligations under international drug control treaties while potentially limiting burden on industry by allowing these fields to be amendable.

Consistent with current practice, importers and exporters would continue to generally be allowed to amend the base weight of controlled substance(s) listed on their filed declaration prior to the start of an import or export transaction (*i.e.*, prior to shipment). However, also consistent with current practice, exporters would not be allowed to exceed the total base weight of controlled substance(s) listed on the corresponding authorization for import issued by the foreign competent national authority. Also consistent with current practice, neither would exporters be allowed to exceed the strength of a controlled substance product if product strength information has been included on the authorization for import issued by the foreign competent national authority. Consistent with § 1312.15(a) for imports of controlled substances under permit procedure, importers under declaration procedure would be allowed to request an amendment to an import declaration regarding the quantity of controlled substances once a shipment has arrived at the U.S. customs port of entry if the increase in the amount of controlled substance to be imported is less than 1% of that listed on the filed declaration. Importers and exporters need not request an amendment for the sole purpose of decreasing the amount authorized.

Consistent with current practice, importers and exporters would continue to be able to amend a filed import or export declaration to remove a controlled substance. However, importers and exporters would no longer be able to amend declarations to add a new controlled substance or replace a controlled substance with another controlled substance. Instead, importers and exporters who needed to make changes to any of these fields would need to cancel the existing declaration and file a new declaration. The DEA understands that sometimes the incorrect controlled substance is identified on the declaration due to clerical error, for example because a similar item was selected from the drop-down selection in the DEA Office of Diversion Control secure network application that was located near the correct item. However, the DEA has closely considered this issue and ultimately determined that because the identification of the controlled substance proposed to be imported or exported is such a critical element of the closed system of distribution, that this element should not be amendable. As stated elsewhere in this preamble, the DEA reminds importers and exporters that the duty to file reports and other documents with the DEA includes the duty that these filings be complete and accurate.

Similarly, in a change from current practice, the DEA is proposing to cease allowing importers and exporters to amend information related to the authorization to import or export from the foreign competent national authority. The DEA understands that sometimes, especially in the case of less experienced importers and exporters, the incorrect foreign authorization identifier is entered onto the declaration. This is often the result of numbers being transposed or a different number on the foreign permit being entered instead of the actual authorization identifier. However, similar to the identification of the controlled substance to be imported or exported, the DEA has closely considered this matter and ultimately determined that because the authorization from the foreign competent national authority to import or export a controlled substance is such a critical element to the Administration's ability to monitor and ensure the closed system of distribution, this element should not be amendable. As stated above and elsewhere in this document, the DEA reminds importers and exporters that the duty to file reports and other documents with the DEA includes the duty that these filings be complete and accurate.

Consistent with current practice, importers and exporters would not be able to request an amendment to a filed import or export declaration for changes to the importer or exporter's name (as it appears on their DEA certificate of registration) or the name of the foreign importer or exporter. The DEA considers the name of the foreign importer or exporter to be a key factor in determining associated risks of the diversion of controlled substances. Therefore, these fields would not be amendable.

However, also consistent with current practice, as stated above, the DEA would continue to allow importers and exporters to amend any additional associated company names they are DBA (doing business as) that they wish to have included in the notes section of the declaration. The only change from current practice is that such amendments would be required to be made through the DEA Office of Diversion Control secure network application.

Importers and exporters would be required to make an official request through the DEA Office of Diversion Control secure network application for an amendment. Supplementary information submitted by an importer or exporter through the DEA Office of Diversion Control secure network application would not automatically trigger the amendment process. An amendment would have no effect on the date of expiration of the declaration; an amended import or export declaration would have the same expiration date as the originally filed declaration. Return information would not be allowed to be amended. Importers and exporters would be able to request that filed import or export declaration be canceled provided that no shipment has yet been made.

Registrants would be required to submit all requests for an amendment that would affect the total base weight of each controlled substance, other than those allowed to be released into the United States pursuant to §§ 1312.18(f) and 1312.16(a)(5), at least three business days in advance of the date of release by customs. Three business days are the minimum amount of time that the DEA needs to review this type of requested amendment and transmit the applicable data to the ITDS. All other requests for amendment would be required to be submitted to the DEA at least one business day before the anticipated date of release by a customs officer at the port of entry or port of export. One business day is the minimum amount of time that the DEA needs to review and accept the requested amendment and transmit the applicable data to the ITDS.

For the reasons stated above, the DEA is also proposing mandatory electronic filing of return information for controlled substances imported or exported under declaration procedures; see section II, B, 1 of this proposal under the heading "Terminology and Definitions" for additional discussion of "return information."

(c) Import and Export Declarations for Listed Chemicals

The DEA proposes to incorporate the mandatory electronic filing of import and export declarations for listed chemicals into §§ 1313.12 and 1313.21. Similar to the proposed § 1312.03, discussed above, the DEA is proposing a new § 1313.03, which references a list of applicable forms for part 1313, and will state that the declaration is electronic.

Under this proposal, the DEA would issue a transaction identification number once the DEA reviewed a listed chemical import or export declaration for completeness, and the 15-day reporting clock would begin on the date that the importer or exporter files a complete declaration. An import or export transaction of a listed chemical would not be allowed to take place until the transaction identification number has been issued and 15 calendar days have elapsed from the date a complete declaration was filed. Transaction identification numbers would be single-use numbers, unique to a specific transaction. While current DEA regulations do not require confirmation of receipt or acceptance from the DEA prior to importation or exportation pursuant to a declaration, the proposed change aligns with current practices. In current practice, for notifications submitted through the DEA Office of Diversion Control secure network application and those that are not, industry waits until the transaction identification number has been issued to proceed with the transaction. The transaction identification number is assigned by the DEA only after the DEA has reviewed the filing for completeness. The proposed regulatory codification of current practices regarding the issuance of a transaction identification number is designed to ensure that electronically submitted declarations are indeed received by the DEA, are completed, and can be appropriately tracked and monitored; to streamline the declaration filing process; and to eliminate duplicate filings. Current DEA regulations requiring declarations to be completed in triplicate would be eliminated.

The DEA is also proposing to amend the language relating to waivers of the 15-day advance reporting requirement for importations by "regular importers" and export transactions between regulated persons and "regular customers" in §§ 1313.12, 1313.15, and 1313.21. With the implementation of the ITDS, it would be difficult for customs officers to clear a shipment of relevant listed chemicals without first receiving appropriate information from the DEA. The DEA has determined that three business days is the minimum amount of time that the DEA needs to review the information regarding the shipment and to transmit the applicable data accurately to the ITDS. The CSA requires the DEA to provide by regulation the circumstances in which the 15-day advance notice requirement required by 21 U.S.C. 971(a) does not apply for imports of listed chemicals by "regular importers" and exports of listed chemicals between regulated persons and "regular customers." 21 U.S.C. 971(b). Pursuant to this authority, in the current regulations, the DEA has provided that specific circumstances allow for a waiver of the entire 15-day period of advance notification.[9] Because a waiver of the entire 15-day period will no longer be feasible after implementation of the ITDS, the DEA proposes now to describe circumstances in which importers and exporters will not be subject to the 15-day advance notification requirement but must provide 3 calendar-days advance notification. The DEA does, however, propose to allow registrants to proceed with the import or export transaction as soon as the transaction identification number has been issued, regardless of whether the 3-calendar-day period has concluded. While the CSA also requires regulated persons subject to waivers to notify the DEA of the transaction "at the time of any importation or exportation," the DEA intends to consider the notification provided to the DEA by customs officers at the time of release to serve this statutory purpose.

The DEA is proposing to revise §§ 1313.16, 1313.17, 1313.26, and 1313.27 to clarify the procedure for amending listed chemical import and export declarations after filing. Importers and exporters of listed chemicals would submit a request to amend or cancel a filed declaration to the Administration through the DEA Office of Diversion Control secure network application. Return information may not be amended. Requirements regarding updated notices for change in circumstances in §§ 1313.16 and 1313.26 would remain essentially the same. However, to accommodate implementation of the ITDS, the DEA would require that amendments be submitted through the DEA Office of Diversion Control secure network application. Importers and exporters for whom the 15-day advance reporting requirement has been partially waived pursuant to 21 U.S.C. 971(b) needing to make changes in advance of shipment, such as to increase the quantity of a listed chemical to be imported or exported, would be required to file their amendment at least three business days in advance of the date of release by a customs officer at the port of entry or port of export. As described above, three business days is the minimum amount of time that the DEA needs to review the amendment and transmit the applicable data to the ITDS.

For the reasons stated above, the DEA is also proposing mandatory electronic filing of return information for listed chemicals imported or exported under declaration procedures; see section II, B, 1 of this proposal under the heading "Terminology and Definitions" for additional discussion of "return information."

(d) Import and Export Reports for Tableting and Encapsulating Machines

The DEA proposes to incorporate mandatory electronic reporting requirements into § 1310.05 for all regulated transactions involving tableting machines and encapsulating machines, including domestic, import, and export transactions. To standardize and streamline the electronic filing of these reports, the DEA proposes to implement usage of a new form, DEA Form 452, Reports for Regulated Machines, which would cover imports, exports, and domestic regulated transactions of tableting and encapsulating machines, and whose usage would be referenced in the revised regulations. The new form would be accessed, completed, and submitted by regulated persons entirely though the DEA Office of Diversion Control secure network application. Upon receipt and review, the Administration will assign each completed report a transaction identification number. The DEA Form 452 would not be deemed filed until the Administration issues a transaction identification number. As discussed above, transaction identification numbers would be single-use identifiers, unique to a specific communication or transaction (*e.g.*, a notice, filing, report, application, etc.), signifying that a communication has been received, reviewed, and accepted. While current DEA regulations do not require confirmation of receipt from the DEA before the report is deemed filed, the proposed change is designed to ensure that electronically submitted reports are indeed received by the DEA, are completed, and can be appropriately tracked and monitored; to streamline the report filing process; and to eliminate duplicate filings. The current §§ 1310.05 and 1310.06 would be revised to reflect that these reports relating to tableting and encapsulating machines would now be submitted on the DEA Form 452.

Currently, regulated persons must provide notification of the import or export of a tableting machine or encapsulating machine on or before the date of importation or exportation. 21 CFR 1310.05(c). The DEA is proposing to require that the DEA Form 452 be submitted to the DEA 15 calendar days before the anticipated date of arrival at the port of entry or port of export in order to allow time for the DEA to review the information and transmit it to the ITDS. In order for these reports to be effective, they must be communicated by the DEA to CBP prior to arrival of the shipment at the port. The DEA has received reports that under current regulatory procedures, which require reporting "on or before" the date of importation, CBP has encountered machines at a hub or port of entry for which the importer has not provided DEA with notification, and that seizures have resulted.[10] Under the revised regulations, an importer may not initiate an import or export transaction involving a tableting machine or encapsulating machine until the regulated person has been issued a transaction identification number from the Administration. The importer or exporter could proceed with the import or export of the machine(s) as soon as the transaction identification number has been issued. These changes are proposed in a revised § 1310.05(c). Correspondingly, the DEA is proposing to amend § 1310.05(c) to provide clear direction that regulated persons are to submit notification of import or export of tableting or encapsulating machines through the DEA Office of Diversion Control secure network application.

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[9] Importers should be aware that these waivers of advance notification requirements apply only to the information the trade files with the DEA; for example, importers remain required to follow CBP's Importer Security Filing and Additional Carrier Requirements (commonly known as "10+2") rule, which applies to import cargo arriving to the United States by vessel.

The DEA is proposing in the revised § 1310.06(e)(1)(v) that reports of importation of tableting or encapsulating machines include the reason for the importation. This information would assist the DEA in understanding the intended medical, commercial, scientific, or other legitimate use of the machine.

Additionally, the DEA proposes to add a paragraph (c)(2) to § 1310.05 to address what regulated persons are to do in the event that an import shipment of tableting machines or encapsulating machines has been denied release by customs. Proposed requirements for denied shipments of imported tableting machines and encapsulating machines parallel the requirements for denied shipments of controlled substances and listed chemicals. Importers would be required to report to the Administration, through the DEA Office of Diversion Control secure network application, within 24 hours of denial, that the shipment was denied release by a customs officer into the United States and the reason for the denial. Under the proposal, denials of shipments must be reported whether or not the denial is based on a violation of the CSA or its implementing regulations. Reports of denied releases by customs officers at the port entry of tableting and encapsulating machines are needed to aid the DEA in identifying attempted unreported imports of tableting and encapsulating machines. The DEA does not believe that reports of shipments denied release from the United States at the port of export are required because the DEA should already have knowledge of those machines through reports of their previous import (if applicable) and domestic regulated transactions required by the current § 1310.05(a)(4) and (c). A new proposed § 1310.06(g) would detail the information to be included in such report of denied release into the United States. If an importer subsequently receives notice from a customs officer that their shipment will be released into the United States, the importer would be required to file an amended DEA Form 452 with the DEA before the shipment may be released. In such circumstances, the regulated person may seek to have the tableting machines or encapsulating machines released by customs upon receipt of a transaction identification number for the refiled and amended DEA Form 452 without regard to the 15-day advance filing requirement.

For the reasons stated above, the DEA is also proposing mandatory electronic filing of return information for tableting and encapsulating machines imported or exported; see section II, B, 1 of this proposal under the heading "Terminology and Definitions" for additional discussion of "return information." Return requirements would be incorporated into a new paragraph (h) in § 1310.06 and the existing paragraphs in the section correspondingly relabeled. This proposed change and other proposed changes to part 1310 not directly associated with the implementation of ITDS are discussed in more detail in section II, B, 6, b of this document.

The DEA also is proposing to revise the text that currently is located in § 1310.06(g) to require reports relating to exports of machines that are refused, rejected, or otherwise deemed undeliverable to be made through the DEA Office of Diversion Control secure network application. This provision, which is proposed to be moved to § 1310.06(i), does not require the use of a DEA Form 452. The DEA also proposes to require these reports to be submitted "at the earliest practicable opportunity" rather than the current standard of "within a reasonable time." This proposed change would conform reporting requirements for declared exports of machines which are refused, rejected, or otherwise returned to the statutory language of 21 U.S.C. 830(b) which requires reports of regulated transactions in a tableting machine or encapsulating machine (including reports of importation or exportation of such machines) to be reported "at the earliest practicable opportunity."

(e) Transshipments of Controlled Substances

Applications for transshipment permits would still be allowed to be submitted to the DEA via paper in accordance with the existing procedures under § 1312.31 for schedule I controlled substances. Information will be posted to the DEA Office of Diversion Control Web site informing persons seeking to transship schedule I controlled substances how to submit an application for a transshipment permit. Advance notification of transshipments for schedule II, III, and IV controlled substances would also still be allowed to be submitted to the DEA via paper in accordance with the current § 1312.32. The electronic application and filing process is not feasible in such circumstances because foreign IP addresses are blocked by the Department of Justice's firewall and are prevented from accessing the DEA Office of Diversion Control secure network application. Although the transshippers themselves would not have direct access to the instructions on the DEA Web site due to the firewall protection, it is the DEA's understanding that most transshippers have someone in the United States as a domestic presence facilitating the transaction who will be able to access the instructions. There is no change from the current operational system. The DEA also proposes to explicitly state in §§ 1312.31 and 1312.32 that a separate filing is required for each shipment, conforming the requirements of this section with the requirements for imports and exports of controlled substances in part 1312.

(f) Transshipments of Listed Chemicals

Advance notification would still be allowed to be submitted to the DEA via paper in accordance with the existing procedures under § 1313.31 for persons seeking to import a listed chemical into the United States for transshipment. Advance notification would still also be allowed to be submitted to the DEA via paper in accordance with the existing procedures under § 1313.31 for persons seeking to transfer, or transship listed chemicals within the United States for immediate exportation. The electronic application and filing process is not feasible in such circumstances because foreign IP addresses are blocked by the Department of Justice's firewall and are prevented from accessing the secure network application on the DEA Office of Diversion Control Web site. While a broker or trader for an international transaction might be able to electronically submit the required information from a domestic IP address, for consistency and fairness across all transshipment activities, the DEA is proposing to allow paper applications and notices to continue for all transshipment transactions. Although the transshippers themselves would not have direct access to the instructions on the DEA Web site due to the firewall protection, it is the DEA's understanding that most transshippers have someone in the United States as a domestic presence facilitating the transaction who will be able to access the instructions. There is no change from the current operational system.

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[10] As discussed in notes 5 and 9, and later in this document, the DEA is including in this proposal to make global changes to DEA regulations to change usage, where applicable, of "import" and "export" to reference the date of release by customs officers for purposes of DEA recordkeeping and reporting requirements.

(g) Notifications of International Transactions by Brokers or Traders

The DEA proposes to incorporate in § 1313.32 the mandatory electronic filing of notifications of international transactions involving listed chemicals which meet or exceed the threshold amount identified in § 1310.04. While current DEA regulations do not require confirmation of receipt from the DEA prior to conducting an international transaction, the DEA is proposing to amend § 1313.32 to require that notifications of international transactions would not be deemed filed until a transaction identification number has been issued by the DEA. This change is designed to ensure that electronically submitted notifications are received by the DEA, are completed, and can be appropriately tracked and monitored; to streamline the notification filing process; and eliminate duplicate filings.

2. Security

The DEA's secure application authentication methods allow only authorized persons to gain access to the application and ensure that persons can only gain access in the roles in which they are authorized. Because the secure network application can only be accessed through authentication, verifying the legitimacy of the reporter/applicant is possible without a requirement for a signature. Additional security protections are based on the requirement that return information is tied to a specific transaction. The reporter must have knowledge of the applicable transaction identification number or permit number in order to file the required return information.

Under this proposed rule, the application, completion, and filing processes would be electronic; however, the electronic equivalent of the current, fillable DEA paper applications and other forms for imports and exports would not be downloadable. Rather, persons would be able to securely download approved permits and filed declarations, notices, and reports in digital image format. The DEA would enable security measures on the downloaded documents to prevent fraud, forgery, or other misuse or manipulation.

Applicants and registrants must provide effective controls and procedures to guard against theft and diversion of controlled substances. 21 CFR 1301.71(a). This includes responsibility for ensuring effective controls and procedures for which their agents and employees have access to and responsibility for completing and filing applications, notices, reports, and other filings required by DEA regulations, whether those filings be in paper format or electronic. Registrants must exercise caution in the consideration of employment of persons who have access to listed chemicals, who have been convicted of a felony offense relating to controlled substances or listed chemicals, or who have, at any time, had any application for registration with the DEA denied, had a DEA registration revoked, or surrendered a DEA registration for cause. 21 CFR 1309.72.

The DEA also takes this opportunity to remind registrants, those exempt from registration, and regulated persons that they may not delegate their liability away to their agents or employees. Registrants, those exempt from registration, and regulated persons remain legally liable (jointly or severally) with their agents or employees for violations of the CSA. It is unlawful for any person to knowingly or intentionally import or export controlled substances; knowingly or intentionally bring or possess on board a vessel, aircraft, or vehicle a controlled substance; or manufacture, possess with intent to distribute, or distribute a controlled substance in any means other than those authorized by the CSA. 21 U.S.C. 960(a). Except as provided in the CSA, it is unlawful for any person to knowingly import or export a listed chemical with intent to manufacture a controlled substance; export a listed chemical in violation of the laws of the country to which the chemical is exported; serve as a broker or trader for an international transaction involving a listed chemical, if the transaction is in violation of the laws of the country to which the chemical is exported; import or export a listed chemical knowing or having reasonable cause to believe that the chemical will be used to manufacture a controlled substance; export a listed chemical, or serve as a broker or trader for an international transaction involving a listed chemical knowing or having reasonable cause to believe that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported; import or export a listed chemical with the intent to evade the reporting or recordkeeping requirements of 21 U.S.C. 971; import a listed chemical in violation of 21 U.S.C. 952, import or export such a chemical in violation of 21 U.S.C. 957 or 971, or transfer such a chemical in violation of 21 U.S.C. 971(d); or manufacture, possess with intent to distribute, or distribute a listed chemical in violation of 21 U.S.C. 959. 21 U.S.C. 960(d). It is unlawful for applicants, registrants, those exempt from registration, regulated persons, or agents or employees thereof, to knowingly and willfully falsify, conceal, or cover up by any trick, scheme, or device a material fact. 18 U.S.C. 1001(a)(1). It is unlawful for applicants, registrants, those exempt from registration, regulated persons, or agents or employees thereof, to knowingly and willfully make false statements or representations. 18 U.S.C. 1001(a)(2). It is unlawful for applicants, registrants, those exempt from registration, regulated persons, or agents or employees thereof, to knowingly and willfully make or use any false writing or document knowing it to contain materially false, fictitious, or fraudulent statement or entry. 18 U.S.C. 1001(a)(3).

It is the position of the DEA that an employee who has knowledge of diversion of controlled substances or listed chemicals from his employer by a fellow employee has an obligation to report such information to his employer. 21 CFR 1301.91, 1309.73.

3. Miscellaneous

To account for approvals by the Administration through the DEA Office of Diversion Control secure network application, DEA regulations would be amended to remove the reference to facsimile signatures found in § 1312.13 for import permits. To account for greater security and decrease opportunities for diversion, the DEA also proposes to eliminate the current requirements in §§ 1312.13 and 1312.23 that import and export permits be issued sequentially and instead assign each permit a unique, randomly-generated identifier.

Pursuant to E.O. 13659 (ITDS), the DEA would cease distributing paper copies of permits and declarations to CBP/customs services of Insular Areas. Instead, the DEA would electronically transmit pertinent data fields from the permit, declaration, or other notice to the ITDS.

To accommodate the change in practices concerning the exchange of information between the DEA and CBP/customs services of Insular Areas as part of the implementation of the ITDS, the DEA proposes to generally, globally remove current DEA regulations that address the transmission and review of import and export information between the DEA and CBP. The regulations that would be affected are §§ 1312.14, 1312.19, 1312.24, 1312.28, 1313.14, and 1313.23. The removal of these regulations will allow for increased flexibility to make adjustments regarding the transmission of information between the DEA and CBP/customs services of Insular Areas as the process is implemented. No changes or modifications in the exchange of information between the DEA and CBP/customs services of Insular Areas should have any impact on those entities that must utilize the DEA Office of Diversion Control secure network application to submit applications or filings. The DEA is not proposing to remove current operational requirements found in § 1312.15, "Shipments in greater or less amount than authorized."

B. Proposed Amendments Indirectly Associated With Implementation of the International Trade Data System

1. Terminology and Definitions

For purposes of clarity and transparency, the DEA proposes to update its regulations for consistency of terminology (within DEA regulations, between DEA regulations and the CSA, and between DEA regulations and the regulations of other agencies that regulate imports and exports), to reflect name changes to referenced entities, and to add new definitions. These changes involve both technical and substantive amendments.

The DEA proposes to make technical changes to update references to certain named entities. One, all references to the "U.S. Customs Service" will be changed to "U.S. Customs and Border Protection" (CBP). In 2003, the functions of the Customs Service were transferred to the Department of Homeland Security (DHS). Its successor agency is known as U.S. Customs and Border protection (CBP). Two, the DEA is making a change in § 1310.06 to change "Federal Food and Drug Administration" to the agency's formal name, the "U.S. Food and Drug Administration." Three, the DEA will amend current § 1312.12(b) (proposed § 1312.12(c)) to reflect that the cities located in the Republic of India currently referenced as Calcutta and Bombay are now recognized by the U.S. State Department as Kolkata and Mumbai. The DEA will also take this opportunity to remove any remaining incongruous references to the "Director" when referencing the head official of the DEA and alternatively insert the term "Administrator" or "Administration" as appropriate.

Additionally, the DEA proposes to make a technical change to more concisely incorporate U.S. obligations under international treaties of drug control, as statutorily codified in the CSA. The DEA will amend its regulations to consistently reference the "competent national authority" when referencing a foreign jurisdiction having authority to authorize the importation or exportation of controlled substances and listed chemicals into or out of their jurisdiction. This change is being accompanied by the addition of a definition in the regulations for "competent national authority." A competent national authority (CNA) is an entity that has authority to authorize imports and exports of narcotic drugs and psychotropic substances and regulate or enforce national controls over precursor and essential chemicals. Generally, the only entities recognized as such by the DEA are those entities identified in the directory of "Competent National Authorities Under the International Drug Control Treaties" published by the United Nations Office on Drugs and Crime. However, for purposes of exports of narcotic drugs, such term also includes freely associated states eligible to receive exports of narcotic drugs from the United States pursuant to 48 U.S.C. 1972.

The DEA will remove "jurisdiction of the United States" as a defined term in §§ 1300.01(b) and 1300.02(b) but will add a clarification of the definition of the term "United States" in those provisions. Although the term "United States" is defined at 21 U.S.C. 802(28), the proposed definitions in the regulations will clarify the Administration's interpretation and make the reader aware that places and waters subject to the jurisdiction of the United States, in addition to the customs territory of the United States, include (*but are not limited to*) the U.S. territories or possessions listed in the new term. The list of territories and possessions is not a catalogue of Insular Areas where the CSA is in effect. Rather, these listed territories or possessions (U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) are ones that are permanently inhabited. Thus, they are ones from which controlled substances, listed chemicals, and tableting or encapsulating machines might be expected to be regularly imported into the customs territory of the United States (or exported to foreign jurisdictions), as well as ones into which such materials may be imported from foreign jurisdictions, all of which would require compliance with the Administration's import and export regulations. No substantive change is intended by this revision. Removal of the definition of "jurisdiction of the United States" and corresponding changes to remove the term in §§ 1301.12, 1301.34, and 1302.07, as well as in the definitions of "export" and "import" in 21 CFR part 1300, will make DEA regulations consistent with the CSA. The DEA proposes to remove the phrase "jurisdiction of the United States" from § 1301.12(b)(3) because it is redundant with the preceding clause referencing registration at another location in the same State, as "State" is broadly defined in 21 U.S.C. 802(26). The addition of the phrase "in which he practices" to § 1301.12(b)(3) would conform the regulation to registration requirements for practitioners as stated in 21 U.S.C. 823(f). No substantive change is intended by this amendment. Similarly, the clause "within and without the jurisdiction of the United States" would be removed from § 1301.34(c)(2) as it is superfluous with the first portion of that regulation. No substantive change is intended by this amendment. In determining whether it is in the public interest to issue a registration to import schedule I or II controlled substances, the DEA considers employment of security procedures to guard against in-transit losses both domestically and abroad and will continue to do so. The term "jurisdiction of the United States" is also found in the definition of "chemical import." The DEA proposes to remove that definition as unnecessary and superfluous, as it is only used once in subsequent DEA regulations, in § 1313.14 in reference to "listed chemical import declarations."

In association with the above, the DEA also proposes to amend §§ 1301.24, 1301.26, 1309.26, 1312.13, and 1312.15 to denote the responsibility of customs services of Insular Areas, and not just CBP, to enforce the import and export requirements of the CSA. When controlled substances, listed chemicals, and tableting or encapsulating machines are imported into, or exported from, a U.S. territory (or possession) or an Insular Area of the United States that is not part of the customs territory of the United States, these items are cleared by the customs service of an Insular Area and not CBP.[11]

The DEA proposes to make global amendments to its import and export regulations where appropriate to reference the date of "release" by customs officers of items entering or departing the United States rather than the date of "import" or "export" where such terms are currently used in DEA regulations establishing DEA recordkeeping and reporting requirements (as compared to determining liability under the CSA as a result of items entering or leaving places and waters subject to the jurisdiction of the United States). This change will make clear that the DEA does not equate the "date of import" and "date of export" with the date that a customs officer "releases" an item that has been imported or an item intended or destined for export. As noted earlier in the document, the meaning of import and export under the CSA is much broader than how those terms may be used by other agencies exercising import or export control pursuant to organic statutes other than the CSA (*i.e.,* the actual date of import or export under the CSA may, and frequently will, occur at a date different than the date of release by a customs officer).

The DEA proposes to make a technical amendment to remove references to telex and facsimile number contact information found in various sections of 21 CFR part 1313, as telex systems and facsimile machines are now rarely utilized by registrants, regulated persons, or their agents. The DEA would add a general reference to "contact information." This change is intended to account for contact information systems such as email now in common usage as well as other forms of communication which may be developed in the future.

The DEA proposes to make a technical amendment to replace all current references in DEA regulations to "special controlled substances invoice(s)" with "export declaration(s)." This change will conform terminology among the DEA Form 236, DEA regulations, and current practice.

The DEA is proposing global technical amendments related to plain language principles. The DEA has tried to balance the redrafting of regulatory language to better correspond with Federal Plain Language Guidelines against the knowledge that regulated persons have historical familiarity with long-standing regulatory text which may have been the subject of previous interpretation by the Administration and court decisions. Many of the DEA's current import and export regulations have not ever been significantly modified since the original requirements were implemented under predecessor drug control statutes (with reimplementation under authority of the CSA). The DEA has tried to balance the historical knowledge of the Administration and presently regulated individuals against the need for newly regulated persons and a broader segment of the population to be able to more easily read and comprehend applicable requirements. These proposed changes include changing the word "shall" to "must," "desiring" to "seeking," and "furnish" to "file," without intending any change to the meaning of existing regulations. The DEA is proposing technical amendments throughout the revised regulations to eliminate use of passive voice in favor of the active voice. This change will make it easier for readers to identify what actions must be taken and by whom. The DEA's proposal would also eliminate unnecessary content and unnecessary words and phrases from regulations. The proposal also includes reorganization of several regulations to group reporting requirements for specific individuals or types of reports. This change will help to reduce the need to cross-reference between multiple regulations in order to more easily understand at a glance if you must report, when you must report, what you must report, and how you must report.

The DEA also proposes to amend various import and export regulations related to the maintenance of records to add a cross reference to 21 CFR part 1304 or 1310, as applicable, which are the general parts governing recordkeeping and reporting responsibilities related to controlled substances and listed chemicals, respectively.

In addition to the above noted technical changes, the DEA proposes to define the terms "customs officer," "port of entry," "port of export," "return information," and "shipment" currently utilized in DEA regulations. Defining these terms will add clarity and transparency as to how these terms are utilized for the specific purposes of DEA regulations related to the import and export of tableting and encapsulating machines, controlled substances, and listed chemicals as compared to how these terms may be used by other federal agencies having additional authorities over import or export. The proposed DEA definitions are substantially similar to how these terms are used by other agencies with overlapping authority over import and export. However, the definitions are not exact duplications because of the unique obligations and requirements imposed on imports and exports of controlled substances, listed chemicals, and tableting and encapsulating machines by the CSA. Most specifically, DEA regulations must take into account that the CSIEA defines "import" in broader terms than just in relation to the customs territory which is used as the basis for CBP's definition of "date of importation" and related terms. Similarly, CBP's definition of "port of entry" is defined narrowly to reference only the authority of CBP officials, whereas DEA regulations also need to take into account the authority of customs officials of Insular Areas of the United States to enforce the CSA.

The proposed definition of "customs officer" makes clear that for purposes of DEA regulations, the term means any person authorized to enforce the customs laws of the United States. Consistent with 21 U.S.C. 951–953 and other provisions of the CSA, the term "customs officer" includes customs officers of any commonwealth, territory, or possession of the United States. Correspondingly, in defining "port of entry," the DEA's goal is to improve readability and transparency, and to clarify that applicable regulations regarding the importation of tableting and encapsulating machines, controlled substances, and listed chemicals apply to all locations at which these machines and substances may potentially be imported. *See* 21 U.S.C. 951(a)(1). The proposed definition of such locations include, but are not limited to, ports of entry as defined in title 19 of the United States Code, customs stations, landing rights airports, and user fee airports. Relatedly, the DEA is proposing to add a definition for "port of export" and make technical amendments throughout the export regulations to consistently refer to the "port of export." Current DEA regulations variously refer to the point at which goods are released by customs officers for export from the United States as both the "port of exit" and the "port of exportation." The proposed definition of "port of export" is based on the definition of the term in the Foreign Trade Regulations. 15 CFR 30.1. The Foreign Trade Regulations are promulgated by the U.S. Census Bureau, the Federal agency responsible for collecting, compiling, and publishing trade statistics for the United States pursuant to title 13, U.S.C., chapter 9. While the proposed definition is not an exact duplication, due to the different authorities and responsibilities of the respective agencies, no significant substantive differences are intended. By basing the DEA's definition of "port of export" on 15 CFR 30.1, consistency of meaning, despite the unique requirements of the CSA, for the term will be achieved throughout the import and export process for persons who are subject to regulation by various Federal agencies.

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[11] Although the U.S. Virgin Islands are outside the customs territory of the United States, the customs laws of the U.S. Virgin Islands are enforced by U.S. Customs and Border Protection. 19 CFR 7.2(c).

"Shipment" is variously defined by the federal entities having authority over importation and exportation of goods. The addition of a definition of this term in DEA regulations will aid in readability and transparency on how this term is understood and utilized by the DEA in regard to the importation and exportation of tableting and encapsulating machines, controlled substances, and listed chemicals. Introduction of the proposed definition emphasizes requirements found in 21 CFR parts 1310, 1312, and 1313 that a shipment of tableting or encapsulating machines, controlled substances, or listed chemicals is not only limited to a single transaction between a single importer or exporter and a single consignee on a single loading document, but also that the shipment must occur on a single conveyance (*e.g.,* one plane, one ship, or one freight train—but not each rail car), as opposed to multiple conveyances (*e.g.,* two planes, two ships, two freight trains, or any combination thereof). This definition is not meant to preclude release of merchandise into the United States that has been transshipped at a location outside of the United States. This is meant to clarify that each individual shipment of tableting or encapsulating machines, controlled substances, or listed chemicals must be associated with a single filing with the DEA for such activity. Consistent with long-standing DEA policy and the proposed definition, a load of goods would be considered a "split shipment" if it is divided into multiple parts to be placed onto more than one conveyance, even if on the same commercial loading document. Under existing DEA policy and under these proposed regulations, such "split shipments" cannot be included on a single declaration or permit. Each part of such shipment constitutes a shipment in its own right and requires a separate permit or declaration pursuant to these proposed changes. This addition of the definition, as proposed, would not change the ability of registrants to include multiple line items on one permit application, declaration, or notice. Neither is the definition meant to preclude the ability of importers and exporters to utilize multiple common carriers as intermediaries for the transportation of an entire shipment. Thus, for example, a shipment consisting of lots A and B, subject to a single valid export permit or declaration, can be reloaded *together* from one conveyance to another (such as from a freight train to a plane on its way to the port), but lots A and B cannot be separated from each other onto *separate conveyances* (such as onto separate planes or separate ships) at any time until the shipment has reached its final destination and the export transaction concluded. (The same being true in reverse for imports until delivered to the registered location.) Likewise, lot A cannot be subdivided into lots A1 and A2 unless lots A1 and A2 are subject to separate valid permits or declarations. In relation to this change, and for consistency with the existing single-shipment requirements found in 21 CFR parts 1312 and 1313, the DEA proposes to amend § 1310.05(c)(1) to specify that each shipment of tableting or encapsulating machines must be reported separately to the DEA. To further make clear this prohibition, the DEA proposes to add a definition of "split shipment" to mean an import or export shipment that is divided between two or more conveyances.

Additionally, the DEA is proposing to amend §§ 1304.21(d) and 1310.06 to clarify record keeping requirements concerning imports and exports. The current text of § 1304.21(d) states that the date of importation or exportation is the date on which the controlled substances are "actually" imported or exported. The DEA is proposing to amend these regulations to instead require that in maintaining records concerning imports and exports, the registrant needs to record the date on which the items are released by a customs officer at the port of entry or port of export. However, it should be understood that this clarification only applies for purposes of recordkeeping. For all other purposes under the CSIEA, the date of import or export is the date such activity actually occurs within the meaning of those terms under the Act. *See* 21 U.S.C. 951 through 953. The regulation remains unchanged with respect to recording dates of receipt and distribution, *i.e.,* the dates will remain the actual date received at the registered location and distributed from the registered location.

The DEA is additionally proposing to add a definition of "return information" to §§ 1300.01(b) and 1300.02(b) stating that such information references information that persons are required to report to the Administration following an import or export transaction. While this term is already generally understood by the regulated community, the term is not defined, and may cause initial confusion to the general public or parties that are newly subject to DEA reporting requirements.

The DEA proposes to harmonize the return information requirements across parts 1310, 1312, and 1313, to the extent possible. This document discusses the details of each proposal in the relevant section below. In general, the DEA is proposing that return information must be reported within 30 calendar days after release by customs at the port of entry or exit, or within 10 calendar days of a written request by the Administration, whichever is sooner. All return information for applications or other initial filings that are required to be made electronically through the DEA Office of Diversion Control secure network application would likewise be required to be filed electronically through the same system. Because the secure network application can only be accessed through authenticated access that ensures the legitimacy of the reporter/filer, and because the user must know the applicable transaction identification number or permit number in order to input return information for a specific transaction, the DEA does not see a need for return information to be signed by a responsible company official. Therefore, the DEA is proposing to remove the requirement for signature by a responsible company official that currently appears in § 1312.22(c)(7).

2. Part 1302: Labeling and Packaging Requirements for Controlled Substances

Corresponding to the removal of "jurisdiction of the United States" and the revised definitions of "export" and "import," the DEA proposes to make a corresponding technical change to § 1302.07 to reflect those definitional changes. The sealing requirement would be separately stated for imports and exports. This change allows the import statement to clearly reflect that the sealing requirement for imported controlled substances applies regardless of whether the import occurred inside or outside of the customs territory of the United States. Separating the import and export requirements also makes clear that the distinction between the customs territory and the non-customs territory is only applicable to imports and not exports.

3. Part 1304: Records and Reports for Registrants

The DEA proposes to make a technical amendment to § 1304.02 to reflect that definitions found in § 1300.02, "Definitions relating to listed chemicals," are not applicable to part 1304, that addresses the records and reports that are required of controlled substance handlers. (21 CFR part 1310 addresses records and reports of listed chemicals and certain machines.)

As discussed in section II, B, 1 of this document above, the DEA will make a technical amendment to amend § 1304.21(d) to separately state reporting requirements concerning imports and exports of controlled substances. The recording date for receipt, distribution, other transfer, or destruction would not change. The regulation would be amended to state that the recording date for imports or exports of controlled substances is the date on which the controlled substance was released by a customs officer at the port of entry or port of export.

4. Part 1308: Schedules of Controlled Substances

The DEA proposes to make two technical updates to part 1308. First, the DEA would amend § 1308.01 to denote that part 1308 also includes nonnarcotic substances, chemical preparations, veterinary anabolic steroid implant products, prescription products, and anabolic steroid products excluded pursuant to 21 U.S.C. 811. Second, the DEA would amend § 1308.49 to reflect the current requirements of the CSA regarding issuance of temporary scheduling orders. 21 U.S.C. 811(h) was amended by section 1153 of the Food and Drug Administration Safety and Innovation Act of 2012, Public Law 112–144, July 9, 2012, to make temporary scheduling orders effective for two years, with an option to extend for up to one year during the pendency of proceeding under 21 U.S.C. 811(a). The CFR was not updated when the law changed. The DEA also proposes to realign the subsections of § 1308.49 to properly separate the discussion of the circumstances in which a temporary scheduling order will be vacated.

5. Part 1309: Registration of Manufacturers, Distributors, Importers and Exporters of List I Chemicals

The DEA proposes to amend § 1309.32(d) to add "manufactured" to the list of business activities each application can include for each list I chemical. Adding "manufactured" would accurately reflect an "activity" that an applicant could conduct with list I chemicals if appropriately registered. No change is required to DEA Form 510 because "manufacturer" is already listed as an option.

The DEA is proposing to correct and update the cross-reference in § 1309.46(d) by removing the reference "§ 1309.54" and replacing it with the reference "§ 1309.53." Section 1309.46(d) currently instructs an applicant to file a request for a hearing pursuant to § 1309.54. However, § 1309.54 is entitled "Burden of Proof," and therefore is an inaccurate cross-reference.

The DEA is proposing to correct and update the cross-reference in § 1309.51(a) by removing the cross-reference to § 1309.57 and replacing it with the cross-reference "1309.55." Currently, § 1309.57 is a misleading cross-reference since it does not exist in Title 21, chapter II of the CFR. The "Hearings" section in part 1309 concludes at § 1309.55. The DEA is therefore changing the cross-reference in § 1309.51(a) from "1309.57" to "1309.55." Finally, the DEA is proposing to correct two minor typographic issues in § 1309.71.

6. Part 1310: Records and Reports of Listed Chemicals and Certain Machines

a. Mail Order Reporting for Ephedrine, Pseudoephedrine, Phenylpropanolamine, and Gamma-Hydroxybutyric Acid

The DEA proposes to incorporate mandatory electronic reporting requirements into part 1310 for monthly reports of mail-order transactions involving ephedrine, pseudoephedrine, phenylpropanolamine, and gamma-hydroxybutyric acid (including drug products containing these chemicals or controlled substance) required to be filed in accordance with § 1310.03(c) pursuant to 21 U.S.C. 830(b)(3). To standardize and streamline the electronic filing requirement of these monthly mail-order reports, the DEA proposes to implement usage of a new form, DEA Form 453, which would be referenced in the revised regulations. The new form would be accessed, completed, and submitted by regulated persons entirely through the DEA Office of Diversion Control secure network application. 21 CFR 1310.03(c) would be further revised to reflect that reports would not be deemed filed until the Administration issues a transaction identification number unless they are complete upon submission. As discussed earlier in this document, transaction identification numbers would be single-use identifiers, unique to a specific communication, signifying that a communication has been received, reviewed, and accepted by the DEA. While current DEA regulations do not require confirmation of receipt from the DEA before the report is deemed filed, the proposed change is designed to ensure that electronically submitted reports are indeed received by the DEA, are complete, and can be appropriately tracked and monitored; to streamline the report filing process; and to eliminate potential duplicate filings. The current § 1310.06(i) would be revised to reflect that the monthly mail-order information required to be submitted would now be submitted on the DEA Form 453 and would be designated as § 1310.06(k). 21 CFR 1310.03(c) would be further revised by separately listing the requirement for monthly reports to be submitted by regulated persons who engage in the specified domestic mail-order transactions and export transactions. The proposed revision also more plainly lays out the requirement that the regulated person must be engaged in a transaction with one of the specified chemicals or controlled substance and use or attempt to use the U.S. Postal Service or any private or commercial carrier for both activities in order to be required to file the monthly report. This revision is not intended to impose any different requirements than the current regulation, but only to ease understanding of the reporting requirements. 21 CFR 1310.05(e) would correspondingly be amended to reflect the implementation of the mandatory electronic filing requirement.

The DEA is also proposing technical amendments to § 1310.05(d) to revise the mailing information in the second sentence and to replace the term "shall" in three locations without changing the requirements.

b. Listed Chemicals and Tableting and Encapsulating Machines

The DEA proposes to amend § 1310.05 to require reports of unusual or excessive loss or disappearance of a listed chemical to be filed through the DEA Office of Diversion Control secure network application. When determining whether a loss is unusual or excessive, the DEA is proposing guidelines that the regulated person should consider: (1) The actual quantity of a listed chemical; (2) the specific listed chemical involved; (3) whether the loss or disappearance of the listed chemical can be associated with access to those listed chemical by specific individuals, or whether the loss or disappearance can be attributed to unique activities that may take place involving the listed chemical; and (4) a pattern of losses or disappearances over a specific time period, whether the losses or disappearances appear to be random, and the result of efforts taken to resolve the losses. If known, the regulated person would also need to report whether (1) the specific listed chemical was a likely candidate for diversion and (2) local trends and other indicators of the diversion potential of the listed chemical. This language is similar to the current regulatory language relating to theft and loss of controlled substances in § 1301.74(c).

In addition, the DEA proposes to clarify in the revised § 1310.05(b)(1) that regulated persons must submit a report of unusual or excessive loss or disappearance whether or not the listed chemical is subsequently recovered. The DEA also has proposed changes in the revised § 1310.05(b)(1) to clarify which party has the responsibility for reporting during domestic and international transactions. These changes will streamline the data collection process and allow the DEA to more efficiently respond to diversion as well as to respond to reporting requests concerning these items from the United Nations.

The DEA also proposes to remove the phrase "whenever possible" from the oral reporting requirements of the current § 1310.05(b). The DEA believes that the phrase is redundant with the stated requirement that such reports be made "at the earliest practicable opportunity." Removing this phrase would better align the reporting requirements with the statutory language of 21 U.S.C. 830(b)(1).

In response to the above discussed changes, the DEA proposes to restructure § 1310.05(a) and (b) to reflect the revised reporting structure. Paragraph (a) would address those reports made solely to the local DEA office in accordance with the current and revised § 1310.05(a)(1) and (2). Paragraph (b) would address those reports made orally to the local DEA office with written reports being submitted through the DEA Office of Diversion Control secure network application. The reporting requirements now located in § 1310.05(b) would be transferred to paragraphs (a)(1) and (2), and (b)(1) and (2), as applicable. This change consolidates the reporting requirements for each of the applicable reports into their applicable paragraphs; readers would no longer be required to look at both paragraphs to determine when and how they must initially report these transactions. In addition, the DEA proposes to clarify in § 1310.05(a)(2) that regulated persons must report orally, not in writing, any proposed regulated transaction with a person whose description or other identifying characteristic the Administration has provided to the regulated person. Regulated persons would be required to orally report the other types of actions at the earliest practicable opportunity to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located.

21 CFR 1310.06 would be revised to reflect the various changes in §§ 1310.03 through 1310.05. Cross-citations have been amended to reflect where regulations have been moved and new forms instituted. The DEA also proposes in § 1310.06(a)(3) to require regulated persons to include the NDC number of the product containing the listed chemical, if applicable, in all records required by § 1310.03(a). If the record contains the NDC number, information about the "form of packaging" would not be necessary. The restructuring of § 1310.05(a) also corrects a long-standing typographical error in the current § 1310.06(c), which now incorrectly references § 1310.05(a)(4) instead of (a)(3). 21 CFR 1310.06(c) currently states that a report submitted pursuant to § 1310.05(a)(4), domestic regulated transactions, must include a description of the circumstances leading the regulated person to make the report. However, the corresponding example relates to an unusual loss, which is addressed in the current § 1310.05(a)(3) (proposed § 1310.05(b)(1)). The DEA also is proposing to make technical amendments in § 1310.06, including replacing the term "shall" in paragraphs (a) and (b).

The DEA would standardize submissions of domestic and import and export regulated transaction reports involving tableting and encapsulating machines through the introduction of a new form, the DEA Form 452. Under the current regulations, regulated persons who engage in a domestic regulated transaction in a tableting or encapsulating machine are required, whenever possible, to make an oral report to the DEA Divisional Office in advance of the transaction, followed by a written report. 21 CFR 1310.05 (a)(4) and (b). In the revised § 1310.05(b)(2), the DEA proposes to make the oral reporting mandatory and to mandate the electronic filing of the written report. The DEA also proposes to provide specific guidelines on when those reports must be given. The revised § 1310.05(b)(2) would require regulated persons to orally report domestic regulated transactions in a tableting machine or an encapsulating machine when an order is placed rather than at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved. The written report (DEA Form 452) would be required to be filed within 15 calendar days after the order has been shipped by the seller. The previous standard was originally adopted for reporting of domestic regulated transactions for uniformity with the timeframe reporting standard imposed by 21 U.S.C. 830(b)(1)(A) for transactions involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or other suspicious circumstances. However, the DEA proposes to exercise its authority under 21 U.S.C. 830(b)(1) to impose a different reporting timeframe standard for machines. The revised standards are not only less ambiguous for regulated persons to follow, they also ensure the DEA receives the information in time to take appropriate action as may be necessary. The new DEA Form 452, which was discussed above in section II, A, 1, d, would cover not only import and export regulated transactions of tableting and encapsulating machines required under the current § 1310.05(c) but also the domestic regulated transactions of tableting machines or encapsulating machines required by the current § 1310.05(a)(4). The requirements for the content of domestic reports would be moved from § 1310.06(d) to a new § 1310.06(f), while the requirements for reports of importations and exportations would all be contained within § 1310.06(e). The DEA also is proposing to amend the recordkeeping requirements in § 1310.06(a) and reporting requirements in § 1310.06(e) and (f) to require the inclusion of information about whether the machine is manual or electric. Under the proposed language in §§ 1310.06(e)(1)(vi) and 1310.06(f)(3), the DEA would require reports of importations and domestic transactions to include any proposed changes to the identifying information of imported machines that will occur after the importation or other transaction.

The DEA also is proposing to amend § 1310.06 to require regulated persons who import or export a tableting or encapsulating machine to report return information to the Administration within 30 calendar days of the release of the shipment by customs at the port of entry or port of export, or within 10 calendar days after receipt of a written request by the Administration. The DEA has included the provision for the requirement to submit return information earlier than the 30 days for two reasons. First, it conforms to the changes proposed for controlled substances and listed chemicals in parts 1312 and 1313. Uniformity of requirements should simplify procedures and ease understanding of the requirements by regulated industry. Second, the option to request advance return information allows the DEA to receive information that may be needed for time-sensitive requirements, such as investigations that may need to result in immediate action to protect the public health and safety. Return information would be required to be submitted electronically through the DEA Office of Diversion Control secure network application on the DEA Form 452. Reports would not be deemed filed until a transaction identification number has been issued by the DEA. Pursuant to the proposed § 1310.06(h), importers would be required to report specifics on their return, including dates of the transaction, quantities of machines involved, and descriptions of the machines. Consistent with the current requirements importers also would be required to report subsequent transfers of the machines under § 1310.05(b)(2). Reports of transfers after import may be submitted with the return information or separately.

The proposed revisions relating to tableting and encapsulating machines that would standardize the submission of reports of regulated transactions, whether domestic or import/export, and require return information, would enhance the monitoring of these machines and allow the DEA greater ability to detect and prevent their use for the illicit manufacture of controlled substances. While tableting machines and encapsulating machines are commonly used by legitimate companies to produce pharmaceuticals and nutritional supplements, they are also used by traffickers to produce single dosage units of illicit synthetic substances such as methylenedioxymethamphetamine (''MDMA'') aka ''Molly,'' ''ecstasy,'' and other synthetic designer drugs classified as schedule I controlled substances or analogue substances. These machines have also been known to be used by marijuana dispensaries, steroid labs, and counterfeit drug manufacturers.

Manual capsule fillers and small encapsulating machines can produce anywhere from 15 to 1,000 capsules at a time, and rotary presses can produce massive amounts of tablets in a very short period of time. The value of the machines can range anywhere from under $100 to over $400,000 depending on the type of machine. Importers and exporters are not required to report the value of the machine or its production capacity to the DEA. However, sometimes the manifest will contain the weight of the shipment and will provide some indication of the machine's capacity.

During 2014, 33 machines at various points of entry were seized by CBP for mislabeling and nonidentification. Regulatory changes in the proposed rule would require importers and exporters to report to the DEA when a shipment has been denied release by a customs officer for any reason, whether or not the denial was based on a violation of DEA regulations. Likewise, by unifying the reporting format for regulated transactions in tableting machines, whether domestic, import, or export, the DEA will be able to monitor the flow of these machines through the distribution chain. This will allow the DEA to better understand and monitor the trade in these machines and to adopt more efficient means of stopping the diversion of tableting and encapsulating machines, and prevent their use in the illicit manufacture of controlled substances.

7. Part 1312: Importation and Exportation of Controlled Substances

The DEA proposes to make a technical change to §§ 1312.11 and 1312.22 to insert a cross-reference to part 1301 of chapter II of title 21 of the Code of Federal Regulations when referencing the registration requirements for the importation of controlled substances.

The DEA proposes to amend § 1312.14 to account for revised distribution procedures for import permits. The DEA is retaining the requirement that an official record of the permit (a ''copy'' under current DEA regulatory terms) accompany the shipment of controlled substances. This is an important tool utilized by the DEA for ensuring compliance with the closed system of distribution by allowing quick initial visual indication of compliance with requirements with the CSA. However, because customs officers will be able to electronically validate the legitimacy of the import permit through ITDS, customs officers will not need to physically detach the official record of the permit for validation. An official record of the permit must instead accompany the shipment until it reaches its final destination. The DEA also proposes to amend § 1312.14 to omit the discussion of the circumstances in which customs officers will refuse entry of a shipment.

The final destination for an import must be the registered location of the importer. (The import must be received at the registered address of the importer before being moved to another location of the importer or delivered to a customer.) The receipt of imported goods is a principal activity of registered importers. Pursuant to 21 U.S.C. 958(h), a separate registration is required at each principal place of business where applicants import or export controlled substances. Accordingly, the final destination of a shipment of imported controlled substances is the registered location of the registrant. Drop shipments, *i.e.*, deliveries made by an importer directly to a customer without passing through the registered location of the importer,[12] are explicitly prohibited under the proposed revisions to § 1312.19. Similarly, consistent with current requirements, deliveries may not be made directly to a warehouse exempted from registration pursuant to § 1301.12(b)(1); they must arrive first at the registered location.

A technical amendment to paragraph (a) of § 1312.15 is proposed to cross-reference § 1312.16, concerning shipments that may be in greater or lesser amount than what is authorized by the import permit.

Associated with the foregoing changes, as discussed earlier in this document, the DEA is additionally proposing to amend its regulations regarding expiration dates associated with imports and exports of controlled substances. The DEA proposes to change the current expiration period of import and export permits found in §§ 1312.16 and 1312.25 from not more than six months to not more than 180 calendar days after the date of issuance. This change will standardize expiration procedures as not all months have the same number of days. The DEA also proposes to amend §§ 1312.18 and 1312.27 to specify an expiration date for import and export declarations for controlled substances. Such declarations do not currently have an expiration date assigned to them; however, permits to import and export controlled substances expire not more than six months after approved under the current regulation. 21 CFR 1312.16 and 1312.25. Similar to permits, at times declarations filed with the DEA are never actually utilized. The DEA is concerned that absence of an expiration date for these declarations may lead to incomplete or inaccurate records in the ITDS. Therefore, the DEA is proposing that declarations expire 180 calendar days after the date the declaration is deemed filed with the Administration.

The DEA proposes to modify the condition currently found in § 1312.22(a) that requires an application for a permit to export controlled substances to contain an affidavit that the packages of controlled substances for export are labeled in conformance with obligations of the United States under international treaties, conventions, or protocols "in effect on May 1, 1971." The regulation will be amended to instead require that such affidavit state that packages of controlled substances for export are labeled in conformance with obligations of the United States under international treaties, conventions, or protocols which are in effect at the time of export or reexport. The DEA does not believe that this change will have any current effect on the regulated community because it is not a new requirement. However, the DEA is taking this opportunity in revising its other import and export regulations to propose this change to account for any changes in international treaties, conventions, or protocols which might be made in the future.

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[12] See definition of ''drop shipment,'' *e.g., http://www.businessdictionary.com* (accessed 05.24.2015).

As discussed above, this proposal includes changes to harmonize, to the extent possible, return information requirements for import and export regulations throughout parts 1310, 1312, and 1313 for tableting and encapsulating machines, controlled substances, and listed chemicals. Although these provisions are similarly structured, the actual content of the return information varies across the regulations to account for international reporting requirements for machines, controlled substances, and listed chemicals. Variations in return reporting requirements also vary among controlled substances, listed chemicals, and tableting and encapsulating machines to maximize the detection, investigation, and prevention of diversion. The DEA has reviewed the return information currently collected for imported and exported controlled substances and is proposing changes.

The DEA is proposing amendments to §§ 1312.12, 1312.18, 1312.22, and 1312.27 to require registrants and those exempt from registration to report return information to the Administration following imports and exports of controlled substances authorized by permits and conducted pursuant to filed declarations. The DEA is proposing to require this information to be submitted within 30 calendar days, or within 10 calendar days after a request from the Administration, whichever is sooner. This regulatory text change is consistent with existing business practice, as importers and exporters generally submit such information to the DEA at the conclusion of transactions. The submission of such reports will allow the United States to meet its obligations under article 19 (*Estimates of drug requirements*) and article 20 (*Statistical returns to be furnished to the Board*) of the Single Convention on Narcotic Drugs, 1961, and article 16 (*Reports to be furnished by the Parties*) of the Convention on Psychotropic Substances, 1971. The DEA will continue to independently collect such return information outside of the single window as the ITDS does not capture all elements of the return information that the DEA needs to submit under those treaty obligations and otherwise adequately monitor the closed system of distribution of imports and exports to detect and prevent diversion. 21 U.S.C. 871(b). Additionally, the timing and frequency of required return information reporting is outside the scope of the single window. Requirements for return information to be submitted to the DEA are already specifically included in § 1312.22(d)(6) for reexported controlled substances pursuant to 21 U.S.C. 953(f)(6).

For imported and exported controlled substances there are four principal pieces of information that the DEA is proposing importers and exporters supply to the DEA in the returns: The date on which the controlled substances arrived/departed the registered location, the date on which a customs officer released the shipment, the actual quantity of controlled substances that arrived/left the registered location, and the actual quantity of controlled substances that a customs officer actually released. The current text in 21 CFR 1312.22 relating to controlled substances exported for subsequent reexportation requires the reporting of the "date shipped." This requirement has been interpreted differently, sometimes as the date it left the facility and sometimes as the date the import/export transaction occurred. Both dates are needed to adequately monitor the closed system of distribution for import and export transactions. For example, an analysis of the amount of time it takes a shipment to complete an import or export transaction could be compared with the rate of theft and loss and could potentially lead to corresponding changes to DEA security regulations being proposed. Likewise both the actual amount of controlled substances that customs released and the actual amount of controlled substances that arrived or left the registered facility are needed to adequately monitor the closed system of distribution and allow precise accountability of all substances within a registrant's inventory. These figures allow a base level against which to cross-check reports for in-transit losses for imported and exported controlled substances.

The DEA proposes to revise §§ 1312.12, 1312.18, 1312.22, and 1312.27 to prohibit the importation/exportation of any shipment of controlled substances denied release by customs at the port of entry or port of export for any reason without resubmission of the permit application or declaration and issuance of a new permit or transaction identification number by the DEA. For example, if a customs officer denied release of controlled substances at the port of entry because of a violation of another agency's regulation (*e.g.,* U.S. Food and Drug Administration), customs officials would not allow entry until after the reason for denial was adequately addressed and the DEA has issued a new permit or transaction identification number. This change is needed to strengthen the DEA's ability to monitor and detect practices that may render an importer's or exporter's registration inconsistent with the public safety, especially in relation to the DEA's statutory obligation to take into consideration an applicant's compliance with applicable State and local laws and other relevant factors. 21 U.S.C. 823(a), 958(a).

The DEA proposes to amend § 1312.22 to reflect that the Administration has discretion whether to issue a permit for reexport pursuant to 21 U.S.C. 953(f). The proposed revision to § 1312.22(g)(8), like the current regulation, specifies that the exporter must provide "a brief summary of the facts that warrant the return" of an export that has been refused or is otherwise unacceptable or undeliverable. The DEA Office of Diversion Control secure network application contains a field appropriate for this information within the DEA Form 357. Likewise, the "written request for reexport" of a controlled substance subject to declaration requirements, currently required in § 1312.27(b)(5)(iv), can be submitted in a field of the DEA Form 236 in the DEA Office of Diversion Control secure network application. As in the current regulations, a refused or otherwise unacceptable or undeliverable controlled substance subject to the declaration requirements could be imported only after the DEA issues "affirmative authorization in writing." A transaction identification number does not serve as such "affirmative authorization in writing."

The DEA proposes to amend §§ 1312.22, 1312.31, and 1312.32 to require a certified translation of authorizations issued by foreign competent national authorities that are not issued either entirely in English or bilingual with English. If the foreign authorization, or the certified copy of such, is not written in English or bilingual with another language and English, the registrant must submit with their application or notice a certified translation of the permit or license. The DEA proposes that for purposes of this requirement, certified translation will mean that the translator has signed the translation legally attesting to the accuracy of the translation and the attestation has been notarized. This change is meant to ensure that these foreign authorizations are complete and accurate, and that the information that they contain are accurately understood and applied to DEA import/export policies and procedures.

8. Reexportation of Controlled Substances—Including Implementation of Section 4 of the Improving Regulatory Transparency for New Medical Therapies Act

This proposal contains amendments that would implement section 4, Re-exportation Among Members of the European Economic Area, of the Improving Regulatory Transparency for New Medical Therapies Act, Public Law 114–89 (hereinafter "the 2015 Act"), which was signed into law on November 25, 2015. Section 4 of the 2015 Act amended section 1003 of the Controlled Substances Import and Export Act (CSIEA) (21 U.S.C. 953) by making changes to paragraph (f) and adding paragraph (g), changes that allow for expanded reexportation of certain controlled substances among members of the European Economic Area (EEA). Prior to passage of the 2015 Act, the CSIEA (21 U.S.C. 953(f)) provided, with respect to controlled substances in schedule I or II and narcotic drugs in schedule III or IV, that such substances could be exported from the United States for subsequent reexport from the recipient country (the "first country") to another country (the "second country")—but *with no further reexports from the second country.* The 2015 Act removed this latter limitation provided that every country involved is an EEA country. As a result, unlimited further reexports may now occur among EEA countries, provided the conditions specified in the 2015 Act are met.

Beyond the new allowance for unlimited reexports among EEA countries, most of the statutory requirements that applied to all reexports prior to the 2015 Act remain in effect under the 2015 Act with respect to reexports among EEA countries. For example, it remains a requirement that first, second, and subsequent countries within the EEA must be parties to the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971. 21 U.S.C. 953(f)(1). Also consistent with pre-enactment statutory requirements, each such EEA country must have instituted and maintain, in conformity with such Conventions, a system of controls of imports which the Attorney General deems adequate, the importer and exporter must be properly permitted or licensed, and the controlled substance must be applied exclusively to medical, scientific, or other legitimate uses. 21 U.S.C. 953(f)(2).

However, in contrast to the reexport requirements that apply where the reexport involves any non-EEA countries, the 2015 Act provides that reexportation from the first EEA country to a second EEA country may not be constrained to any specific time period. 21 U.S.C. 953(g)(1). This notice proposes revisions to DEA regulations to incorporate this and other changes mandated by the 2015 Act.

In drafting the proposed regulatory changes to implement the statutory changes made by the 2015 Act, the DEA carefully took into consideration the new subsection, 21 U.S.C. 953(g)(2), which prohibits the Attorney General from promulgating or enforcing any regulation, subregulatory guidance, or enforcement policy which impedes re-exportation of any controlled substance among European Economic Area countries, including by promulgating or enforcing any requirement that information concerning the consignee, country, and product be provided prior to exportation of the controlled substance from the United States or prior to each re-exportation among members of the European Economic Area.

In interpreting the foregoing provision of the 2015 Act, given that the term "impedes" is somewhat vague, the DEA took the following factors into account. First, the CSIEA itself continues to impose various requirements that some might characterize as "impeding" reexports among EEA countries. Specifically, as described above, the 2015 Act retained, with respect to such reexports, most of the preexisting requirements in 21 U.S.C. 953(f). Second, for the United States to continue to meet its reporting and other obligations under the Single Convention and Psychotropic Convention, the DEA must continue to obtain certain information from persons involved in reexport transactions. For these reasons, the DEA does not interpret the term "impedes" in the 2015 Act to prohibit the DEA from imposing any requirement that goes beyond the explicit requirements of 21 U.S.C. 953(f) and (g). Rather, the DEA interprets the "impedes" clause as follows: (i) The DEA may not promulgate or enforce any regulation of the specific nature described in paragraphs (1) and (2) of 21 U.S.C. 953(g) and (ii) beyond the type of restrictions referred to in paragraphs (1) and (2), the DEA must avoid promulgating or enforcing any unduly burdensome regulations on such reexports.

Consistent with the foregoing interpretation of the 2015 Act, in the proposed revised regulations, the DEA would no longer require bulk substances to undergo further manufacturing process within the first EEA country if the substance is to be reexported within the EEA. Also consistent with this interpretation of the 2015 Act, the DEA proposes to remove the requirement that the exporter must provide product and consignee information beyond the first country in advance of (prior to) export from the United States. Exporters who submit an application for reexport among members of the EEA will continue to be required to supply information of the consignee in the first country, including the consignee's contact information and business—but (as mandated by the 2015 Act) information concerning the second or subsequent consignee, country, and product will not be required to be provided *prior to* exportation of the controlled substance from the United States or prior to each reexportation among members of the EEA. The DEA's continued collection of this information will help ensure that the DEA has sufficient information to uphold U.S. treaty obligations.

Also consistent with the retained requirements of 21 U.S.C. 953(f), DEA registered exporters seeking to export controlled substances to the EEA for such reexport will continue to be required to submit an affidavit that the consignee in the second country and any country of subsequent reexport within the EEA is authorized under the laws and regulations of the recipient country to receive the controlled substances, that the packages are labeled in conformance with U.S. treaty obligations that the controlled substances are to be applied exclusively for medical or scientific uses, that the controlled substances will not be reexported outside of the EEA, and that there is an actual need for the controlled substances for medical or scientific uses within the recipient country. Consistent with past practice, this affidavit will constitute "substantial evidence" for purposes of 21 U.S.C. 953(f)(4) for reexports of controlled substances among members of the European Economic Area. *See* 71 FR 61436, 61438, Oct. 18, 2006.

Presently, under the current § 1312.22(d)(7), the DEA requires that controlled substances must be reexported from the first country to the second country, or countries, within 180 days after the controlled substances have been exported from the United States. As discussed in the notice of proposed rulemaking for *Reexportation of Controlled Substances,* for which the associated final rule added this provision to § 1312.22, the justification behind this requirement is to minimize the likelihood of uncertainties regarding the status of reexport shipments and thereby minimize the likelihood of diversion. 71 FR 61436, 61437, Oct. 18, 2006. However, as previously stated above, the 2015 Act specifically provides that reexportation among members of the EEA may not be constrained to any specific time period. 21 U.S.C. 953(g)(1). Therefore, the DEA proposes to eliminate application of this provision to reexports of controlled substances among members of the EEA.

While, as just discussed, the DEA is proposing to eliminate certain requirements for EEA reexports in order to bring DEA regulations into accordance with the 2015 Act, the DEA continues to believe that those requirements serve an important purpose in safeguarding against international diversion and promoting compliance with international treaty obligations. Therefore, the DEA is not proposing to change or exclude those requirements as they apply outside of the EEA reexport context, as Congress did not require the DEA to do so.

Persons who export controlled substances for reexport among members of the EEA are required by the law to provide return information to the Attorney General within 30 days after each re-exportation, including certification that the reexportation has occurred and "information concerning the consignee, country, and product." 21 U.S.C. 953(f)(6)(B). This return information is in addition to the return information that the exporter must provide related to the export of the controlled substance from the United States to the first country. Because of the constraints imposed by the statutory language in the 2015 Act, the DEA is proposing a straightforward 30-calendar-day reporting limit for reexports of controlled substances without the caveat that the Administration may request such information sooner, as is generally contained in this proposal for other return information. Although the DEA is without authority to require such information to be submitted in advance of the 30-day statutory deadline, the DEA continues to encourage return information on reexports to be submitted as soon as possible so as to allow the DEA to meet its treaty reporting deadlines.[13]

To effectuate and efficiently implement the different reexport requirements between those controlled substances intended for reexport outside the EEA and those intended for reexport within the EEA, the DEA is proposing to restructure § 1312.22. The DEA proposes to restructure § 1312.22 to generally align with the three types of exports covered by the regulation—export not for reexport, export for reexport outside of the EEA, and export for reexport within the EEA. The requirements for export/reexport and return information would be addressed separately under the corresponding header for each type of transaction. Of particular note, this reorganization would allow readers to easily understand the return reporting information for each type of transaction: Return on an export from the United States (not for reexport); for reexports outside the EEA—the return on the initial export from the United States to the first country and a return on the export from the first country to the second country; and for reexports among members of the EEA—the return on the initial export from the United States to the first country and return on the export from the first country to the second country/subsequent export(s) to other EEA member countries.

The DEA is proposing to establish a new Form 161R–EEA for the reporting of reexports among members of the EEA. The DEA Form 161R–EEA would be accessed, completed, and submitted through the DEA Office of Diversion Control secure network application. The DEA considered, but ultimately did not choose to propose, that such applications would be made electronically on the DEA Form 161R based on the fact that there are different application requirements for the two types of transactions required by the CSA. Most important of these distinctions for tracking purposes are that reexports among members of the European Economic Area do not have a time period for which such transactions will "close" (*i.e.,* all return information submitted). While under current § 1312.22(d)(7) (proposed § 1312.22(h)(6)), other reexports must be completed no later than 180 days after initial export from the United States, the 2015 Act specifies that controlled substances may continue to be reexported within the European Economic Area indefinitely, so long as the statutory conditions are met. Use of a new form should not impose a burden on registrants, however. Because the system is electronic the experience for the registrant will be the same regardless of whether they are entering the required application information on a new electronic form or being redirected to a different portion of the electronic DEA Form 161R.

While the new law did not have a direct impact on reexports for nonnarcotic controlled substances in schedules III and IV or controlled substances in schedule V, the DEA is proposing to make corresponding changes to its reexport of controlled substances under declaration procedures found in § 1312.27. If such conforming amendments were not made, there would be stricter requirements for controlled substances exported for reexport within the European Economic Area under declaration procedures than under permit procedures. *See also* DEA final rule, *Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances; Registration of Importers and Exporters of Controlled Substances; Importation and Exportation of Controlled Substances; updating Requirements,* 52 FR 17286, 17287, May 7, 1987 ("One of the stated purposes for the Diversion Control Amendments is to decrease the disparity of control between narcotic and non-narcotic controlled substances.").

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[13] "Under the Single Convention, each country that is a party to the treaty is required to furnish the International Narcotics Control Board (INCB) with annual estimates of, among other things, the quantities of narcotic drugs on hand, the anticipated amounts that will be consumed by the party for legitimate purposes, and the anticipated production quantities. The Single Convention also requires parties to furnish the INCB with statistical returns for the prior year, indicating the amounts of drugs produced, utilized, consumed, imported, exported, seized, disposed of, and in stock. The Psychotropic Convention requires the parties to provide the INCB with statistical reports and assessments containing similar information with respect to psychotropic substances. Through the collection of this information, the INCB provides exporting countries with information on the legitimate requirements of the importing countries and can take steps to reduce the likelihood of international diversion." 71 FR 61436, 61438, Oct. 18, 2006.

9. Part 1313: Importation and Exportation of List I and List II Chemicals

The DEA proposes to add a new § 1313.03 that would consolidate the DEA Form information applicable to part 1313 in a corresponding change to that proposed for the new § 1312.03. The new § 1313.03 would consist of a table referencing the DEA Form number, form name, information about where the form may be accessed, and where the completed form should be submitted.

The DEA proposes to amend § 1313.12(b) to require that all declarations (DEA Form 486/486A) must be complete and accurate when submitted. Under § 1304.21, registrants must maintain complete and accurate records for controlled substances. That requirement applies to import and export declarations for controlled substances. This proposed revision would impose the same requirement for import/export declarations as for listed chemicals.

Declarations (DEA Forms 486/486A) would not be deemed filed until the transaction identification number has been issued by the DEA. Upon receipt and review, the DEA would assign each declaration a transaction identification number (a unique identifier). Once the declaration has been accepted and assigned a transaction identification number, registrants would be able to use the assigned transaction identification number to access the official record of the declaration. While current DEA regulations do not require confirmation of receipt from the DEA prior to importation or exportation pursuant to a declaration, the proposed change is consistent with current practices. Currently, the DEA assigns a Web Tracking Number to each declaration when it is submitted and accepted. The proposed regulatory codification of the issuance of a transaction identification number is designed to ensure that electronically submitted declarations are indeed received by the DEA, are completed, and can be appropriately tracked and monitored; to streamline the declaration filing process; and to eliminate duplicate filings. The fact that the DEA issues a transaction identification number after reviewing the filing does not waive the Administration's right to suspend a shipment under § 1313.41.

The DEA is proposing to make changes in the regulatory text to reflect that 21 U.S.C. 830 has been changed to require official records of import declarations involving listed chemicals to be retained for two years.

As discussed above, return information requirements have been harmonized across parts 1310, 1312, and 1313, to the extent possible. The DEA is proposing that return information must be reported within 30 calendar days after release by a customs officer at the port of entry or export, or reexport. All return information for applications or other initial filings that are required to be made electronically through the DEA Office of Diversion Control secure network application would likewise be required to be filed electronically through the same system. As with controlled substance return information, the DEA is proposing to require listed chemical importers and exporters to include both the date a customs officer releases an imported item or releases an item for export and the date that the shipment arrived at the location of the importer or exporter, the actual quantities of product both when released by a customs officer and at the time of shipment from the exporter's location or arrival at the importer's location, and the actual port of entry or export. These revised reporting requirements will better allow the DEA to track the flow of listed chemicals, and detect and prevent diversion. For example, by tracking and comparing diversion of listed chemicals against the actual port of entry or exit, the DEA will be better able to detect potential weak spots in the import/export system and direct more resources to that region. The DEA also is proposing to revise the regulatory text to clarify that the references to "chemical" and "container" apply to the reporting of subsequent transfers.

The final destination for an import of a list I chemical must be the registered location of the registered importer. The import must be received at the registered address of the importer before being moved to another location of the importer or delivered to a customer. The receipt of imported goods is a principal activity of registered list I chemical importers. Pursuant to 21 U.S.C. 958(h), a separate registration is required at each principal place of business where applicants import or export list I chemicals. Accordingly, the final destination of a shipment of an imported list I chemical is the registered location of the registrant. Drop shipments, *i.e.*, deliveries made by an importer directly to a customer without passing through the registered location of the importer,[14] are explicitly prohibited under the proposed revisions to § 1313.14. Similarly, consistent with current requirements, deliveries may not be made directly to a warehouse exempted from registration pursuant to § 1309.23(b)(1); they must arrive first at the registered location.

The DEA is proposing to amend § 1313.22(a) to add a cross-reference to § 1310.04(g) relating to listed chemicals that may be exported. This change would harmonize § 1313.22(a) with § 1313.21(a).

10. Part 1316: Administrative Functions, Practices, and Procedures

The DEA proposes to amend § 1316.47(a) to align with the DEA's current practice referenced in all recent **Federal Register** publications that requests for a hearing are to be sent directly to the Hearing Clerk. Specifically, this amendment would remove "Attention: DEA Federal Register Representative" from the template letter. Since the paragraph before the template letter states that persons requesting a hearing should refer to § 1321.01 for current mailing addresses, the DEA is not adding an "Attention" field in the template letter.

The DEA is proposing to amend § 1316.48 so that the filing of notices of appearance corresponds with the DEA's practice that requests for hearing shall be sent to the Hearing Clerk. Specifically, the DEA would remove "Attention: Federal Register Representative" from the template letter. Since the paragraph before the template letter states that persons requesting a hearing should see § 1321.01 for current mailing addresses, the DEA is not adding an "Attention" field in the template letter.

C. DEA Mailing Addresses

The DEA proposes to amend the Table of DEA Mailing Addresses found in § 1321.01 to account for changes proposed in this rule as part of the implementation of ITDS. The DEA is also taking this opportunity to propose various technical amendments to the Table of DEA Mailing Addresses.

Pursuant to this proposed action all import and export applications and filings would be submitted through the DEA Office of Diversion Control secure network application. The DEA proposes to amend the Table of DEA Mailing Addresses to retain a reference to the notifications that, prior to this rule, could be made by mail, but note with an asterisk that those filings must now be made electronically. The CFR sections listed under the DEA Import/Export Unit would be merged with those under the DEA Regulatory Section and placed under the header of "DEA Regulatory Section."

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[14] See definition of "drop shipment", *e.g., http://www.businessdictionary.com* (accessed 05.24.2015).

The mailing addresses for §§ 1308.21(a), 1308.23(b), 1308.25(a), 1308.31(a), 1308.33(b), and 1310.13(b) will be transferred from the DEA Office of Diversion Control to the DEA Drug & Chemical Evaluation Section (ODE), the subject matter experts on excluded and exempted products. This change will allow these matters to be processed in a more efficient manner. The reference to § 1307.22, "Disposal of Controlled substances by the Administration delivery application," will be revised to "Delivery of surrendered and forfeited controlled substances" in conformity with the final rule, *Disposal of Controlled Substances,* 79 FR 53520, Sept. 9, 2014. Corresponding to recent internal DEA reorganization, the mailing addresses for §§ 1303.12(b), 1303.12(d), 1303.22, 1304.31(a), 1304.32(a), 1315.22, 1315.32(e) and (g), 1315.34(d), and 1315.36(b), regarding quota applications and reporting, will be moved from the DEA Drug & Chemical Evaluation Section to the UN Reporting & Quota Section under a new corresponding header.

The DEA proposes to amend § 1316.48 to provide that notices of appearance should be sent to the DEA Hearing Clerk instead of the DEA Administrator so that notices of appearance will be filed in a more efficient manner. The DEA also proposes to amend § 1316.47 to provide that requests for hearing should be sent to the DEA Hearing Clerk instead of the DEA Federal Register Representative so that such requests will be filed in a more efficient manner. In the Table of DEA Mailing Addresses in § 1321.01, DEA proposes to make the corresponding change, and to add §§ 1301.43, 1303.34, 1308.44, and 1316.47(a), regarding requests for hearing or appearance and/or waivers, under the DEA Hearing Clerk heading. These items are being directed to the DEA Hearing Clerk to expedite the hearing process and will lead to fewer delays. The DEA is additionally revising this portion of the table to correct the attention line of the mailing address for the DEA Hearing Clerk. The address will be changed from "Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, VA 22152" to "Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, VA 22152."

The DEA is adding the following citations to be directed to the DEA Federal Register Representative: § 1301.34(a)—Filing of written comments regarding application for importation of Schedule I and II substances; § 1303.11(c)—Filing of written comments regarding notice of an aggregate production quota; and § 1303.13(c)—Filing of written comments regarding adjustments of aggregate production quotas. These topics have been added so that comments corresponding to **Federal Register** publications can be sent directly to the Federal Register Representative whose responsibility it is to review comments and make them publicly available, as appropriate. The DEA is additionally amending this portion of the table to revise the attention line of the mailing address for the DEA Federal Register Representative. The address will be changed from "Drug Enforcement Administration, Attn: Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152" to "Drug Enforcement Administration, Attn: Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, VA 22152." Additionally, this rule adds the Web address for the Federal eRulemaking Portal, *http://www.regulations.gov,* under the heading "DEA Federal Register Representative." This Web address provides the ability to type short comments directly into the comment field on the Web page or to attach a file for lengthier comments. This change conforms to the DEA's current practice, referenced in the DEA's recent **Federal Register** publications, which requires that comments either be submitted through *http://www.regulations.gov* or be directed to the DEA Federal Register Representative.

III. Regulatory Analyses

Executive Orders 12866 and 13563

This proposed rule was developed in accordance with the principles of Executive Orders 12866 and 13563. The DEA has determined that this proposed rule is a significant regulatory action, and accordingly this rule has been submitted to the Office of Management and Budget for review.

By business activity, the DEA estimates this rule will result in a combined annual savings of $424,640 for controlled substances importers, exporters, researchers, and analytical labs; a combined annual cost of $5,011 for listed chemical importers and exporters and tableting and encapsulating machine importers and exporters; and no economic impact for brokers, domestic transactions in tableting and encapsulating machines, and mail order transactions of ephedrine (EPH), pseudoephedrine (PSE), phenylpropanolamine (PPA), or gamma-hydroxybutyric acid (GHB). Therefore, the estimated net annual impact of this rule is a cost savings of $419,629 and the estimated combined annual economic effect is $429,650. The DEA does not anticipate that this rulemaking will have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. An economic analysis of the proposed rule can be found in the rulemaking docket at *http://www.regulations.gov.*

Executive Order 12988

The proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This proposed rule is in accordance with the February 19, 2014, Executive Order 13659, "Streamlining the Export/Import Process for America's Businesses," 79 FR 10657, Feb. 25, 2014. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

Below is a summary of the threshold analyses conducted by the DEA to support the certification statement above. The complete threshold analysis is available at *http://www.regulations.gov* for easy reference. The DEA specifically solicits written comments regarding the DEA's economic threshold analysis of the impact of these proposed changes. The

DEA requests that commenters provide detailed descriptions in their comment of any expected economic impacts, especially to small entities. Commenters should provide empirical data to illustrate the nature and scope of such impact.

In accordance with the RFA, the DEA evaluated the impact of this rule on small entities. This proposed rule affects all entities who import or export, or seek to import or export, controlled substances, listed chemicals, tableting and encapsulating machines, or who broker international transactions (from foreign country to another foreign country while in the United States). Additionally, this proposed rule affects all persons who would be required to report unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person in accordance with proposed revised § 1310.05(b)(1), all persons who are required to report domestic regulated transactions in tableting or encapsulating machines in accordance with proposed revised 21 CFR 1310.05(b)(2), and all persons who are required to report mail order transactions of ephedrine (EPH), pseudoephedrine (PSE), phenylpropanolamine (PPA), or gamma-hydroxybutyric acid (GHB) in accordance with 21 CFR 1310.03(c). The affected entities include DEA registrants and non-registrants. A DEA registration is required to import or export any controlled substance and most list I chemicals. A DEA registration is not required to import or export some list I chemicals or any list II chemical, to import or export tableting and encapsulating machines, or to broker international transactions. Also, a DEA registration is not required to conduct domestic transactions in tableting and encapsulating machines or mail order transactions of EPH, PSE, or PPA. (Registration is required for mail order transactions of GHB as GHB is a schedule I controlled substance.) The affected entities (DEA registrants and non-registrants) are grouped into "business activities," based on types of activities performed by the entities. The business activities described in this analysis that are required to have DEA registrations are importers/exporters, researchers, analytical labs, and chemical importers/exporters that deal in the list I chemicals requiring registration (referred to as "DEA-registered listed chemical importers/exporters"). The business activities described in this analysis that are not required to have DEA registrations are chemical importers/exporters that deal in list I chemicals not requiring registration and list II chemicals (referred to as "non-registered listed chemical importers/exporters"), tableting/encapsulating machine importers/exporters, brokers of international transactions, tableting/encapsulating machine domestic suppliers, and entities selling EPH, PSE, and/or PPA by mail order.

The DEA estimates that 7,840 entities are affected by this rule, which consist of 331 controlled substances importers/exporters; 5,884 researchers; 1,200 analytical labs; 231 DEA-registered listed chemical importers/exporters; 76 non-registered listed chemical importers/exporter; 56 tableting/encapsulating machine importers/exporters; 12 brokers of international transactions; 46 tableting/encapsulating machine domestic suppliers; and 4 entities selling EPH, PSE, PPA, and/or GHB by mail order. Regulated persons potentially reporting unusual or excessive loss or disappearance of a listed chemical would be included in one of the business activities above.

The DEA estimates 7,321 (93.4%) of total 7,840 affected entities are small entities. Specifically, the DEA examined the impact of the proposed changes regarding (1) mandatory electronic permit applications and filings, and (2) 180-calendar-day expiration for all declarations for the 7,321 small entities affected by the proposed rule, which consist of 310 controlled substances importers/exporters; 5,474 researchers; 1,134 analytical labs; 218 DEA-registered listed chemical importers/exporters; 72 non-registered listed chemical importers/exporters; 54 tableting/encapsulating machine importers/exporters; 11 brokers of international transactions; 44 tableting/encapsulating machine domestic suppliers; and 4 entities selling EPH, PSE, PPA, and/or GHB by mail order.

The DEA is proposing to mandate the electronic submission of all permit applications and other required filings and reports associated with the importation or exportation of tableting and encapsulating machines, controlled substances, and listed chemicals. Additionally, the DEA is proposing to mandate the electronic submission of all reports associated with the unusual or excessive loss or disappearance of a listed chemical, domestic regulated transactions in tableting or encapsulating machines, and mail order transactions of EPH, PSE, PPA, and GHB. The DEA would cease to accept paper filing of controlled substances import/export permit applications (other than transshipments), controlled substances import/export declarations, listed chemicals import/export declarations, and certain filings and reports specified as discussed previously in this document. Currently, some electronic forms associated with these activities are available online and in use. Usage rates vary for each form and also vary by business activities. However, as virtually all paper submissions of permit applications and declarations are currently delivered via express common carrier with pre-paid return envelope or account information, savings are anticipated because of this change.

The DEA estimates that each conversion to electronic filing from paper controlled substances import/export permit application and controlled substances import/export declaration will result in an estimated cost savings of $58.75 and $9.75, respectively. Based on DEA's registration data, the DEA assumes all affected entities have information systems capable of completing and submitting online forms and downloading, printing, and transmitting electronic documents at nominal additional cost. Among the affected establishments that hold DEA registrations, 92% of previous applications for registration or renewal of registration were made online. Furthermore, even though the email address is an optional data field, 99% of the registrations have an email address on record. Based on these facts and the high rate of internet penetration in the general U.S. population,[15] it is reasonable to assume virtually all regulated establishments, registrants and non-registrants, have information systems capable of completing and submitting online forms and downloading, printing, and transmitting electronic documents at minimal additional cost. No special software or equipment will be needed to access the DEA Office of Diversion Control secure network application.

There are no anticipated cost savings for the conversion to electronic filing from paper for the listed chemicals import/export declarations and tableting and encapsulating machine import/export notifications since virtually all are currently submitted via online, facsimile, or email, without the use of a common carrier. However, the DEA anticipates an additional cost associated with the new requirement for tableting/encapsulating machine importers/exporters to submit return information within 30 calendar days after the release by a customs officer has taken place or within 10 calendar days after receipt of a written request by the Administration to the exporter/importer, whichever is sooner.

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[15] *See* note 15 of the accompanying Economic Impact Analysis ("An estimated 78.1 percent of people in U.S. households had a high-speed Internet connection in 2013. "Computer and Internet Use in the United States: 2013," U.S. Census Bureau, *http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf.*").

The DEA estimates there will be no economic impact associated with the electronic submission of all reports associated with the unusual or excessive loss or disappearance of a listed chemical, domestic regulated transactions in tableting or encapsulating machines, and mail order transactions of EPH, PSE, PPA, and GHB. While the written reports would be required to be made online, the labor cost of making the report is expected to be the same, whether on paper or online.

Based on the varying number of annual occurrences estimated for each of the business activities, the DEA estimates importers/exporters as a group would save $383,857, researchers as a group would save $4,316, and analytical labs as a group would save $37,567. The DEA estimates tableting/encapsulating machine importers/exporters as a group would have an additional cost of $3,978, for a total net savings of $421,761 for the electronic submissions requirement. (Figures are rounded.) Based on the number of affected entities and the cost savings to the business activities as a group, the DEA estimated the average annual cost savings for each affected entity. The DEA estimates importers/exporters, researchers, and analytical labs will save on average $1,160, $1, and $31 per year, respectively, and tableting/encapsulating machine importers/exporters would have a cost of $71 per year.

In addition, the DEA is proposing to specify that all controlled substance and listed chemical declarations expire in 180 calendar days, consistent with the controlled substance import/export permits. If release by a customs officer will occur more than 180 calendar days after the declaration is deemed filed, the declarant must submit a new declaration for the transaction. The 180-calendar-day expiration provision for all controlled substance and listed chemical declarations is estimated to cause a small increase in the number of re-submissions of the declarations. The DEA estimates approximately 1% of all declarations would require re-submissions to replace the expiring declaration, requiring a total of an additional 85 controlled substance declarations and 132 listed chemical declarations per year. The estimated cost of each re-submission of controlled substance declarations and listed chemical declarations, based on estimated labor rates and time to complete the forms, is $13.02 and $7.81, respectively. There is no cost to tableting/encapsulating machine importers/exporters and brokers of international transactions, as this provision does not apply to these business activities. Based on the varying number of annual re-submissions estimated for each of the business activities, the DEA estimates this provision, if promulgated, would cost importers/exporters as a group $1,023, researchers as a group $24, analytical labs as a group $54, chemical importers/exporters as a group $689, and non-registered chemical importers/exporters as a group $344, for a total of $2,132. Based on the number of affected entities and the cost to the business activities as a group, the DEA estimated the average annual cost for each affected entity. The DEA estimates importers/exporters, researchers, analytical labs, chemical importers/exporters, and non-registered chemical importers/exporters will have an average cost impact of $3; $0; $0; $3; and $5 per year, respectively. (Figures are rounded.)

In summary, the DEA combined the impact of the two provisions to estimate the net impact to the affected small entities. The DEA estimates an average annual net savings of $1,157 for the 310 controlled substance importers/exporters, an average annual net savings of $1 for the 5,474 researchers, an average annual net savings of $31 for the 1,134 analytical labs, an average annual net cost of $3 for the 218 DEA-registered listed chemical importers/exporters, an average annual net cost of $5 for the 72 non-registered listed chemicals importers/exporters, an annual net cost of $71 for the 54 tableting/encapsulating machine importers/exporters, no economic impact for the 11 brokers of international transactions, no economic impact for the 44 tableting/encapsulating machine domestic suppliers, and no economic impact for 4 entities selling EPH, PSE, PPA, and GHB by mail order.

The DEA evaluated the net economic impact by size category for each of the business activities. The DEA estimates that the average annual cost savings of $1,157 for controlled substance importers/exporters is economically significant, cost savings greater than 1% of annual revenue, for 32 of 310 small importer/exporter entities. None of the remaining 7,011 small entities of the remaining business activities are estimated to be significantly impacted by this proposed rule. If the proposed rule were finalized, it would have a significant economic impact, in form of cost savings, on 32 (0.4%) of the 7,321 affected small entities. It is the DEA's assessment that 0.4% of small entities does not constitute a substantial number. The DEA's evaluation of economic impact by size category indicates that the proposed rule will not have a significant effect on a substantial number of these small entities.

Unfunded Mandates Reform Act of 1995

The estimated annual impact of this rule is $429,650; thus, the DEA has determined in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.*, that this action would not result in any federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Paperwork Reduction Act of 1995

Pursuant to section 3507(d) of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), the DEA has identified the following collections of information related to this proposed rule and has submitted this collection request to the Office of Management and Budget (OMB) for review and approval. This proposed rule updates the DEA regulations for import and export of controlled substances, listed chemicals, and tableting and encapsulating machines,. The proposal also clarifies certain policies and reflects current procedures and technological advancements. It allows for the implementation of the President's Executive Order on streamlining the export/import process, requiring the government-wide utilization of the International Trade Data System (ITDS). The DEA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if one is required. Copies of existing information collections approved by OMB may be obtained at *http://www.reginfo.gov/public/do/PRAMain.*

A. Collections of Information Associated With the Proposed Rule

The DEA is proposing to revise existing information collections 1117–0004, 1117–0009 and 1117–0013 by establishing mandatory filing of return information for imports and exports of controlled substances.

Additionally, the DEA is also proposing to revise existing information collection 1117–0024 by establishing two new forms for the reporting of transactions with listed chemicals, tableting machines, and encapsulating machines. Specifically, the DEA is creating new DEA Form 452, "Reports for Regulated Machines." The DEA Form 452 will be used by regulated persons to report both domestic regulated transactions as well as import and export regulated transactions of tableting and encapsulating machines. The DEA is also establishing mandatory filing of return information for the importing and exporting of tableting and encapsulating machines that would be incorporated into the DEA Form 452. Additionally, the DEA is proposing to revise existing information collection 1117–0024 by establishing a new form for the reporting of unusual or excessive loss or disappearance of a listed chemical. Regulated persons would report this information on new DEA Form 107, "Reports of Loss or Disappearance of Listed Chemicals."

The DEA is proposing to revise existing information collection 1117–0033 by establishing a new form for reporting mail-order transactions involving specified listed chemicals. Specifically, the DEA is creating new DEA Form 453, "Report of Mail Order Transactions." The DEA Form 453 will be used by regulated persons required to file monthly reports of transactions with nonregulated persons with ephedrine, pseudoephedrine, phenylpropanolamine, or gamma-hydroxybutyric acid (including drug products containing these chemicals or controlled substance) and use or attempt to use the U.S. Postal Service or any private or commercial carrier as well as regulated persons required to file monthly reports of export transactions with ephedrine, pseudoephedrine, phenylpropanolamine, or gamma-hydroxybutyric acid (including drug products containing these chemicals or controlled substance) and use or attempt to use the U.S. Postal Service or any private or commercial carrier.

1. Title: Application for Permit to Export Controlled Substances—DEA Form 161/Application for Permit to Export Controlled Substances for Subsequent Reexport—DEA Form 161R/ Application for Permit to Export Controlled Substances for Subsequent Reexport Among Members of the European Economic Area—DEA Form 161R–EEA

OMB Control Number: 1117–0004.
Form Number: DEA Form 161, 161R, 161R–EEA.

As part of the implementation of the ITDS, the DEA is proposing mandatory electronic filing of return information for any person who desires to export or reexport controlled substances listed in schedule I or II, any narcotic substance listed in schedules III or IV, or any non-narcotic substance in schedule II which the Administrator has specifically designated by regulation in § 1312.30, or any non-narcotic substance in schedule IV or V which is also listed in schedule I or II of the Convention on Psychotropic Substances, 1971.

The DEA is proposing amendments to § 1312.22 in the ITDS proposed rule to provide clear instructions on the process of return information for controlled substances subject to export permit requirements, which will be submitted electronically as part of the DEA Form 161. Specifically, the DEA is proposing to require in § 1312.22 that within 30 calendar days after a controlled substance is released by a customs officer at the port of export from the United States in accordance with the permitting process, or within 10 calendar days after receipt of a written request by the Administration to the exporter, whichever is sooner, the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application (available on the DEA Office of Diversion Control Web site) that such export has occurred and the specifics of the transaction.

As part of the implementation of ITDS, the DEA is proposing to establish a new DEA Form 161R–EEA, discussed in greater detail below, to be used by registrants who export controlled substances for reexport among members of the European Economic Area. The existing DEA Form 161R would remain in use for exports of controlled substances that will be reexported to countries that are not members of the European Economic Area. The DEA is proposing amendments to § 1312.22 in the ITDS proposed rule to provide clear instructions on the process of return information for controlled substances subject to reexport permit requirements that will be reexported outside of the European Economic Area, which will be submitted electronically as part of the DEA Form 161R. Consistent with current requirements, the amended § 1312.22 would require that within 30 calendar days after a controlled substance is released by a customs officer at the port of export the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application (available on the DEA Office of Diversion Control Web site) that such export has occurred and the specifics of the transaction. Also consistent with current requirements, the amended text would require that the exporter must additionally electronically file a similar report of return information within 30 calendar days of the controlled substances being exported from the first country to the second country. As noted, the DEA Form 161R, and associated return information, would be required to be accessed, completed, and submitted to the DEA through the DEA Office of Diversion Control secure network application.

This proposal contains amendments that would implement section 4, Re-exportation Among Members of the European Economic Area, of the Improving Regulatory Transparency for New Medical Therapies Act, Public Law 114–89, which was signed into law on November 25, 2015. Section 4 amended section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953) by making changes to paragraph (f) and adding paragraph (g) that allows for reexportation of controlled substances among members of the European Economic Area. While other reexports must be completed no later than 180 days after initial export from the United States, controlled substances may continue to be reexported among members of the European Economic Area indefinitely, so long as the statutory conditions are met. As part of the implementation, the DEA is proposing to establish a new DEA Form 161R–EEA, "Application for Permit to Export Controlled Substances for Subsequent Reexport Among Members of the European Economic Area," to be used by registrants who export controlled substances for reexport among members of the European Economic Area. Specifically, the DEA is proposing to require in § 1312.22 that within 30 calendar days after the controlled substance is released by a customs offer at the port of export the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application of the particulars of the transaction. The exporter must additionally file similar return information within 30 days of the controlled substances being exported from the first country to the second country and for each subsequent reexport among members of the European Economic Area. The DEA considered but ultimately did not choose to propose that such applications would be made electronically on the DEA Form 161R based on the fact that there are different application requirements for the two types of transactions required by the CSA. Most important of these distinctions for tracking purposes are that reexports among members of the European Economic Area do not have a time period for which such transactions will "close" (*i.e.,* all return information submitted). While under current § 1312.22(d)(7) (proposed § 1312.22(h)(6)), other reexports must be completed no later than 180 days after release by a customs officer at the port of export from the United States, the 2015 Act specifies that controlled substances may continue to be reexported among members of the European Economic Area indefinitely, so long as the statutory conditions are met. As noted, the DEA Form 161R–EEA, and associated return information, would be required to be accessed, completed, and submitted to the DEA through the DEA Office of Diversion Control secure network application.

The DEA estimates that there will be 125 respondents to this information collection. The DEA estimates that the frequency of response will vary as DEA Form 161 is required to be completed by each respondent per each occurrence. The DEA estimates there will be a total of 5,386 responses. The DEA estimates, based on data from an already approved collection containing return information, that it will take 5 minutes (online) to provide return information electronically and that the total annual burden will be 449 hours. The DEA estimates that the frequency of response will vary as DEA Form 161R and DEA Form 161R–EEA are required to be completed by each respondent per each occurrence. The DEA estimates there will be a combined total of 789 responses for DEA Form 161R and DEA Form 161R–EEA. Since the distinction between DEA Form 161R and DEA Form 161R–EEA does not currently exist, the DEA does not have an estimated number of responses for the two forms separately. Actual responses will be used for future information collection requests. Since return information is currently required for reexportations, the proposed rule does not create a new information collection burden for reexportations.

2. Title: Controlled Substances Import/Export Declaration—DEA Form 236

OMB Control Number: 1117–0009.

Form Number: DEA Form 236.

As part of the implementation of the ITDS, the DEA is proposing mandatory electronic filing of return information for any person who desires to import non-narcotic substances in schedules III, IV, and V or to export non-narcotic substances in schedules III and IV and any other substance in schedule V.

The DEA is proposing amendments to § 1312.18(e) in the proposed rule to provide clear instructions on the process of return information for controlled substances imported under declaration procedures, which will be submitted electronically as part of the DEA Form 236 (Import declaration). The amended regulation would state that within 30 calendar days after actual receipt of a controlled substance at the importer's registered location, or within 10 calendar days after the receipt of a written request by the Administration to the importer, whichever is sooner, the importer must report to the Administration utilizing the secure network application available on the DEA Office of Diversion Control Web site certifying that such import occurred and the details of the transaction.

The DEA is proposing to amend § 1312.27(d) in the proposed rule to provide clear instructions on the process of return information for controlled substances exported and reexported under declaration procedures, which will be submitted electronically as part of the DEA Form 236 (Export declaration). The amended regulation would state that within 30 calendar days after the controlled substance is released by a customs officer at the port of export or within 10 calendar days after receipt of a written request by the Administration to the exporter, whichever is sooner, the exporter must report to the Administration through the DEA Office of Diversion Control secure network application (available on the DEA Office of Diversion Control Web site) certifying that such export has occurred and the details of the transaction. For reexports under declaration procedures, the amended regulation states that within 30 calendar days after the controlled substance is exported from the first country to the second country, or within 10 calendar days after the receipt of a written request by the Administration to the exporter, whichever is sooner, the exporter must report to the Administration through the DEA Office of Diversion Control secure network application (available on the DEA Office of Diversion Control Web site) certifying that such export from the first country has occurred and the details of the transaction.

The DEA estimates that there will be 341 respondents to this information collection. The DEA estimates that the frequency of response will vary as DEA Form 236 is required to be completed by each respondent per each occurrence. The DEA estimates there will be a total of 6,026 responses. The DEA estimates, based on data from an already approved collection containing return information, that it will take 5 minutes (online) to provide return information electronically and that the total annual burden will be 502 hours.

3. Title: Application for Permit To Import Controlled Substances for Domestic and/or Scientific Purposes Pursuant to 21 U.S.C. 952

OMB Control Number: 1117–0013.

Form Number: DEA Form 357.

As part of the implementation of the ITDS, the DEA is proposing mandatory electronic filing of return information for any person who desires to import any controlled substance listed in schedule I or II or any narcotic controlled substance listed in schedule III, IV, or V or any non-narcotic controlled substance in schedule III which the Administrator has specifically designed by regulation in 21 CFR 1312.30 or any non-narcotic controlled substance in schedule IV or V which is also listed in schedule I or II of the Convention on Psychotropic Substances.

The DEA is proposing amendments to current § 1312.12(c) in the proposed rule to provide clear instructions on the process of return information for controlled substances imported under permit procedures, which will be submitted electronically as part of the DEA Form 357. Specifically, the DEA is proposing to require in proposed § 1312.12(d) that within 30 calendar days of actual receipt of a controlled substance at the importer's registered location, or within 10 calendar days after receipt of a written request by the Administration, whichever is sooner, the importer must report to the Administration through the DEA Office of Diversion Control secure network application (available on the DEA Office of Diversion Control Web site) that such import occurred and the details of the transaction.

The DEA estimates that there will be 148 respondents to this information collection. The DEA estimates that the frequency of response will vary as DEA Form 357 is required to be completed by each respondent per each occurrence. The DEA estimates there will be a total of 1,024 responses. The DEA estimates, based on data from an already approved collection containing return information, that it will take 5 minutes (online) to provide return information electronically and that the total annual burden will be 85 hours.

4. Title: Reports of Loss or Disappearance of Listed Chemicals—DEA Form 107, and Regulated Transactions in Tableting/Encapsulating Machines—DEA Form 452

OMB Control Number: 1117–0024.

Form Number: DEA Form 107 and DEA Form 452.

As part of the implementation of the ITDS, the DEA is proposing to establish a new DEA Form 452 to be used by regulated persons involved in regulated transactions in tableting or encapsulating machines. The DEA would standardize the current report required in the current § 1310.05(a)(4) for domestic regulated transactions in a tableting or encapsulating machine as well as the report required in the current § 1310.05(c) for import and export of tableting and encapsulating machines. DEA Form 452 would be required to be accessed, completed, and submitted to the DEA through the DEA Office of Diversion Control secure network application.

Moreover, under both the current and revised regulation, each regulated person must orally report any domestic regulated transaction in a tableting machine or an encapsulating machine to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located, although the DEA now proposes to clarify that the report must be made when the order is placed with the seller. The regulated person must subsequently file a written report of the domestic regulated transaction (on DEA Form 452) with the Administration through the DEA Office of Diversion Control secure network application within 15 calendar days after the order has been shipped by the seller. A report (on DEA Form 452) may contain multiple line entries for more than one transaction.

Additionally, the DEA is proposing mandatory filing of return information for the import and export of tableting and encapsulating machines which will be electronically submitted as part of the DEA Form 452. The amended regulation states that within 30 calendar days of the the shipment being released by a customs officer at the port of entry or port of export, or within 10 calendar days after the receipt of a written request by the Administration to the importer/exporter, whichever is sooner, the importer/exporter must report to the Administration through the DEA Office of Diversion Control secure network application (available on the DEA Office of Diversion Control Web site) certifying that such import/export occurred and the details of the transaction. Previously, § 1310.05(c) instructed that regulated persons needed to provide notification of the import or export of a tableting machine or encapsulating machine on or before the date of exportation. However, the DEA has amended § 1310.05(c) in order for DEA Form 452 to be submitted to the DEA at least 15 calendar days before the date of release by a customs officer at the port of entry or port of export in order to allow time for the DEA to review the information and transmit it into the ITDS prior to the actual import or export. 21 CFR 1310.05(c).

As part of the implementation of the ITDS, the DEA is proposing to establish a new DEA Form 107 to be used by regulated persons involved in reporting unusual or excessive loss or disappearance of a listed chemical. The DEA would standardize the current report required to be filed in the current § 1310.05(a)(3). Each regulated person must report to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person. The regulated person will orally report to the Special Agent in Charge of the DEA Divisional Office at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved. The regulated person must also file a complete and accurate DEA Form 107 with the Administration through the DEA Office of Diversion Control secure network application within 15 calendar days after becoming aware of the circumstances requiring the report. Unusual or excessive losses or disappearances must be reported whether or not the listed chemical is subsequently recovered or the responsible parties are identified and action taken against them. DEA Form 107 would be required to be accessed, completed, and submitted to the DEA through the DEA Office of Diversion Control secure network application. While the report would be electronic, the filing requirements are essentially unchanged. The DEA estimates that the reporting burden would continue to be 20 minutes for each report.

Specifically, based on publicly available information and historical data, the DEA estimates that there will be 130 respondents to this information collection, 60 for domestic transactions and 70 for imports or exports. The DEA estimates that the frequency of response will vary as DEA Form 452 is required to be completed by each respondent per each occurrence. As the DEA does not have a strong basis to estimate the number of responses for domestic transactions, the DEA makes an initial estimate (to be refined later) of 52 responses per week for each of 60 respondents, or a total of 3,120 domestic transaction related responses. Based on historical data, the DEA estimates there will be 917 import or export related responses for a grand total of 4,037 responses for domestic transactions, imports, and exports. Because of the information required on the DEA Form 452, the DEA estimates that this form will take 20 minutes to complete, including the oral report for domestic transactions and return information for imports and exports, and that the total annual burden will be 1,346 hours.

5. Title: Report of Mail Order Transactions—DEA Form 453

OMB Control Number: 1117–0033.

Form Number: DEA Form 453.

As part of the implementation of the ITDS, the DEA is proposing to establish a new DEA Form 453, "Report of Mail Order Transactions," to be used by regulated persons required to file monthly reports of transactions with nonregulated persons with ephedrine, pseudoephedrine, phenylpropanolamine, or gamma-hydroxybutyric acid (including drug products containing these chemicals or controlled substance) and use or attempt to use the U.S. Postal Service or a private or commercial carrier as well as regulated persons required to file monthly reports of export transactions with ephedrine, pseudoephedrine, phenylpropanolamine, or gamma-hydroxybutyric acid (including drug products containing these chemicals or controlled substance) and use or attempt to use the U.S. Postal Service or a private or commercial carrier. The DEA would require reports under the current §§ 1310.03(c) and 1310.06(i) to be submitted on a new DEA Form 453 which would be required to be accessed and submitted to the DEA through the DEA Office of Diversion Control secure network application.

Additionally, the form would require the following information: The mail order transaction supplier name and registration number; the purchaser's name and address; the name and address shipped to (if different from purchaser's name and address); the name of the chemical contained in the scheduled listed chemical product and total quantity shipped (*e.g.,* pseudoephedrine, 3 grams); the date of shipment; the product name; the dosage form (*e.g.,* tablet, liquid, powder); the dosage strength; the number of dosage unites; the package type; the number of packages; and the lot number. Previously, § 1310.05(e) instructed that regulated persons submit a written report, containing the information listed above, on or before the 15th day of each month following the month in which the distributions took place. However, the DEA proposes to amend part 1310 in order for DEA Form 453 to be submitted to the DEA electronically on or before the 15th day of each month following the month in which the distributions took place.

Specifically, based on historical data, the DEA estimates that there will be 7 respondents to this information collection. The respondents will provide 12 responses per year. The DEA estimates there will be a total of 84 responses per year. The DEA estimates that this form will take 15 minutes to complete and that the total annual burden will be 21 hours.

B. Request for Comments Regarding the Proposed Information Collections

Under the PRA, the DEA is required to provide a notice regarding the proposed collections of information in the **Federal Register** with the notice of proposed rulemaking and solicit public comment. Section 3506(c)(2)(A) and (B) of the PRA (44 U.S.C. 3506(c)(2)(A) and (B)) requires that the DEA solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the DEA.
- The accuracy of the DEA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Written comments and suggestions from the public and affected agencies concerning the proposed collections of information are encouraged. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comments refer to RIN 1117–AB41/Docket No. DEA–403.

All comments must be submitted to OMB on or before October 17, 2016. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Exports, Imports, Security measures.

21 CFR Part 1302

Drug traffic control, Exports, Imports, Labeling, Packaging and containers.

21 CFR Part 1303

Administrative practice and procedure, Drug traffic control.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, Exports, Imports.

21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

21 CFR Part 1312

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

21 CFR Part 1313

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

21 CFR Part 1314

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1315

Administrative practice and procedure, Chemicals, Drug traffic control, Imports, Reporting and recordkeeping requirements.

21 CFR Part 1316

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Research, Seizures and forfeitures.

21 CFR Part 1321

Administrative practice and procedure.

For the reasons stated in the preamble, the DEA proposes to amend 21 CFR parts 1300, 1301, 1302, 1303, 1304, 1308, 1309, 1310, 1312, 1313, 1314, 1315, 1316, and 1321 as follows:

PART 1300—DEFINITIONS

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 829, 871(b), 951, 958(f).

■ 2. In § 1300.01(b):
■ a. Add definitions for "Competent national authority" and "Customs officer" in alphabetical order;
■ b. Revise the definitions of "Export" and "Import";
■ c. Remove the definition of "Jurisdiction of the United States";
■ d. Add definitions for "Port of entry", "Port of export", "Return information", "Shipment", "Split shipment", and "United States" in alphabetical order.

The additions and revisions read as follows:

§ 1300.01 Definitions relating to controlled substances.

* * * * *

Competent national authority, for purposes of importation and exportation of controlled substances and listed chemicals, means an entity lawfully entitled to authorize the import and export of controlled substances, and to regulate or enforce national controls over listed chemicals, and included as such in the directory of "Competent National Authorities Under the International Drug Control Treaties" published by the United Nations Office on Drugs and Crime. For purposes of exports of narcotic drugs, the term also includes freely associated states authorized to receive such exports pursuant to 48 U.S.C. 1972.

* * * * *

Customs officer means either an Officer of the Customs as defined in 19 U.S.C. 1401(h), or any individual duly authorized to accept entries of merchandise, to collect duties, and to enforce the customs laws of any commonwealth, territory, or possession of the United States.

* * * * *

Export means, with respect to any article, any taking out or removal of such article from the United States (whether or not such taking out or removal constitutes an exportation within the meaning of the customs laws, export control laws enforced by other agencies, or related laws of the United States).

* * * * *

Import means, with respect to any article, any bringing in or introduction of such article into the customs territory of the United States from any place outside thereof (but within the United States), or into the United States from any place outside thereof (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

* * * * *

Port of entry means, unless distinguished as being a foreign port of entry, any place at which a customs officer is duly authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs laws of the United States (whether or not such place is a port of entry as defined in title 19 of the United States Code or its associated implementing regulations). Examples of ports of entry include, but are not limited to, places designated as ports of entry or customs stations in title 19 of the Code of Federal Regulations or by the governing customs authority of that area. When shipments are transported under U.S. Customs and Border Protection immediate transportation procedures, the port of entry shall be the port of final destination.

Port of export means, unless distinguished as being a foreign port of export, any place under the control of a customs officer where goods are loaded on an aircraft, vessel or other conveyance for export outside of the United States. For goods loaded aboard an aircraft or vessel in the United States, that stops at several ports before departing the United States, the port of export is the first port where the goods were actually loaded. For goods off-loaded from the original conveyance to another conveyance (even if the aircraft or vessel belongs to the same carrier) at any port subsequent to the port where the first on-loading occurred in the United States, the port where the goods were loaded onto the last conveyance before departing the United States is the port of export.

* * * * *

Return information means supplemental information required to be reported to the Administration following an import or export transaction containing the particulars of the transaction and any other information as the Administration may specify.

* * * * *

Shipment means a quantity of goods or merchandise imported or exported at one place, at one time, for delivery to one consignee, on a single conveyance, at one place, on one bill of lading, air waybill, or other commercial loading document.

Split shipment means a single import or export that is divided onto two or more conveyances.

* * * * *

United States, when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States, which, in addition to the customs territory of the United States, include but are not limited to the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

* * * * *

■ 3. In § 1300.02(b):

■ a. Remove the definition of “Chemical import”;

■ b. Add definitions for “Competent national authority”, “Customs officer”, “Export”, and “Import” in alphabetical order;

■ c. Remove the definition of “Jurisdiction of the United States”; and

■ d. Add definitions for “Port of entry”, “Port of export”, “Return information”, “Shipment”, “Split shipment”, and “United States” in alphabetical order.

The additions and revisions read as follows:

§ 1300.02 Definitions relating to listed chemicals.

* * * * *

Competent national authority, for purposes of importation and exportation of controlled substances and listed chemicals, means an entity lawfully entitled to authorize the import and export of controlled substances, and to regulate or enforce national controls over listed chemicals, and included as such in the directory of “Competent National Authorities Under the International Drug Control Treaties” published by the United Nations Office on Drugs and Crime.

Customs officer means either an Officer of the Customs as defined in 19 U.S.C. 1401(h), or any individual duly authorized to accept entries of merchandise, to collect duties, and to enforce the customs laws of any commonwealth, territory, or possession of the United States.

* * * * *

Export means, with respect to any article, any taking out or removal of such article from the United States (whether or not such taking out or removal constitutes an exportation within the meaning of the customs laws, export control laws enforced by other agencies, or related laws of the United States).

* * * * *

Import means, with respect to any article, any bringing in or introduction of such article into the customs territory of the United States from any place outside thereof (but within the United States), or into the United States from any place outside thereof (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

* * * * *

Port of entry, unless distinguished as being a foreign port of entry, means any place at which a customs officer is duly authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs laws of the United States (whether or not such place is a port of entry as defined in title 19 of the United States Code or its associated implementing regulations). Examples of ports of entry include, but are not limited to, places designated as ports of entry or customs stations in title 19 of the Code of Federal Regulations or by the governing customs authority of that area. When shipments are transported under U.S. Customs and Border Protection immediate transportation procedures, the port of entry shall be the port of final destination.

Port of export means, unless distinguished as being a foreign port of export, any place under the control of a customs officer where goods are loaded on an aircraft, vessel or other conveyance for export outside of the United States. For goods loaded aboard an aircraft or vessel in the United States that stops at several ports before departing the United States, the port of export is the first port where the goods were loaded. For goods off-loaded from the original conveyance to another conveyance (even if the aircraft or vessel belongs to the same carrier) at any port subsequent to the port where the first on-loading occurred in the United States, the port where the goods were loaded onto the last conveyance before departing the United States is the port of export. For reporting purposes, in the case of an otherwise lawful export occurring by mail, the port of export is the place of mailing.

* * * * *

Return information means supplemental information required to be reported to the Administration following an import or export transaction containing the particulars of the transaction and any other information as the Administration may specify.

* * * * *

Shipment means a quantity of goods or merchandise imported or exported at one place, at one time, for delivery to one consignee, on a single conveyance, at one place, on one bill of lading, air waybill, or other commercial loading document.

Split shipment means a single import or export that is divided onto two or more conveyances.

* * * * *

United States, when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States, which, in addition to the customs territory of the United States, include but are not limited to the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

* * * * *

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 4. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958, 965.

■ 5. Revise § 1301.12(b)(3) to read as follows:

§ 1301.12 Separate registrations for separate locations.

* * * * *

(b) * * *

(3) An office used by a practitioner (who is registered at another location in the same State in which he or she practices) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained.

* * * * *

■ 6. Revise § 1301.24(a)(1) to read as follows:

§ 1301.24 Exemption of law enforcement officials.

(a) * * *

(1) Any officer or employee of the Administration, any customs officer, any officer or employee of the U.S. Food and Drug Administration, and any other Federal or Insular officer who is lawfully engaged in the enforcement of any Federal law relating to controlled substances, drugs, or customs, and is duly authorized to possess or to import or export controlled substances in the course of his/her official duties; and

* * * * *

■ 7. Revise § 1301.26(b) introductory text to read as follows:

§ 1301.26 Exemption from import or export requirements for personal medical use.

* * * * *

(b) The individual makes a declaration to an appropriate customs officer stating:

* * * * *

■ 8. Revise § 1301.34(c)(2) to read as follows:

§ 1301.34 Application for importation of Schedule I and II substances.

* * * * *

(c) * * *

(2) Employment of security procedures to guard against in-transit losses.

* * * * *

■ 9. Revise § 1301.74(c) introductory text to read as follows:

§ 1301.74 Other security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs.

* * * * *

(c) The registrant must notify the Field Division Office of the Administration in his or her area, in writing, of any theft or significant loss of any controlled substances within one business day of discovery of the theft or loss. Unless the theft or loss occurs during an import or export transaction, the supplier is responsible for reporting all in-transit losses of controlled substances by their agent or the common or contract carrier selected pursuant to paragraph (e) of this section, within one business day of discovery of such theft or loss. In an import transaction, once a shipment has been released by the customs officer at the port of entry, the importer is responsible for reporting all in-transit losses of controlled substances by their agent or the common or contract carrier selected pursuant to paragraph (e) of this section, within one business day of discovery of such theft or loss. In an export transaction, the exporter is responsible for reporting all in-transit losses of controlled substances by their agent or the common or contract carrier selected pursuant to paragraph (e) of this section within one business day of discovery of such theft or loss, until the shipment has been released by the customs officer at the port of export. The registrant must also complete, and submit to the Field Division Office in his or her area, DEA Form 106 regarding the theft or loss. Thefts and significant losses must be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them. When determining whether a loss is significant, a registrant should consider, among others, the following factors:

* * * * *

PART 1302—LABELING AND PACKAGING REQUIREMENTS FOR CONTROLLED SUBSTANCES

■ 10. The authority citation for part 1302 continues to read as follows:

Authority: 21 U.S.C. 821, 825, 871(b), 958(e).

■ 11. Revise § 1302.07 to read as follows:

§ 1302.07 Labeling and packaging requirements for imported and exported substances.

(a) The symbol requirements of §§ 1302.03 through 1302.05 apply to every commercial container containing, and to all labeling of, controlled substances imported into the customs territory of the United States from any place outside thereof (but within the United States), or imported into the United States from any place outside thereof. These sealing and labeling requirements are in addition to any sealing requirements required under applicable customs laws.

(b) The symbol requirements of §§ 1302.03 through 1302.05 do not apply to any commercial containers containing, or any labeling of, a controlled substance intended for export.

(c) The sealing requirements of § 1302.06 apply to every bottle, multiple dose vial, or other commercial container of any controlled substance listed in schedule I or II, or any narcotic controlled substance listed in schedule III or IV imported into the customs territory of the United States from any place outside thereof (but within the United States), or imported into the United States from any place outside thereof. The sealing requirements of § 1302.06 apply to every bottle, multiple dose vial, or other commercial container of any controlled substance listed in schedule I or II, or any narcotic controlled substance listed in schedule III or IV, exported or intended for export from the United States.

PART 1303—QUOTAS

■ 12. The authority citation for part 1303 continues to read as follows:

Authority: 21 U.S.C. 821, 826, 871(b).

§ 1303.12 [Amended]

■ 13. Amend § 1303.12 as follows:

■ a. In paragraph (b) by removing "Drug and Chemical Evaluation Section, Drug Enforcement Administration" from the last sentence and adding in its place "UN Reporting and Quota Section, Office of Diversion Control"; and

■ b. In paragraph (d) by removing "Drug & Chemical Evaluation Section, Drug

Enforcement Administration" from the second sentence and adding in its place "UN Reporting and Quota Section, Office of Diversion Control".

§ 1303.22 [Amended]

■ 14. In the introductory text to 1303.22, remove "Drug & Chemical Evaluation Section, Drug Enforcement Administration" and add in its place "UN Reporting and Quota Section, Office of Diversion Control".

PART 1304—RECORDS AND REPORTS OF REGISTRANTS

■ 15. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 831, 871(b), 958 (e)–(g), and 965, unless otherwise noted.

■ 16. Revise § 1304.02 to read as follows:

§ 1304.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or § 1300.01, § 1300.03, § 1300.04, or § 1300.05 of this chapter.

■ 17. Revise § 1304.21(d) to read as follows:

§ 1304.21 General requirements for continuing records.

* * * * *

(d) In recording dates of receipt, distribution, other transfers, or destruction, the date on which the controlled substances are actually received, distributed, otherwise transferred, or destroyed will be used as the date of receipt, distribution, transfer, or destruction (*e.g.*, invoices or packing slips, or DEA Form 41). In maintaining records concerning imports and exports, the registrant must record the date on which the controlled substances are released by a customs officer at the port of entry or port of export.

* * * * *

§ 1304.31 [Amended]

■ 18. In § 1304.31(a), remove "Drug and Chemical Evaluation Section, Drug Enforcement Administration" from the second sentence and add in its place "UN Reporting and Quota Section, Office of Diversion Control".

§ 1304.32 [Amended]

■ 19. In § 1304.32(a), remove "Drug and Chemical Evaluation Section, Drug Enforcement Administration" from the second sentence and add in its place "UN Reporting and Quota Section, Office of Diversion Control".

■ 20. Revise § 1304.33(a) and (f)(1) to read as follows:

§ 1304.33 Reports to Automation of Reports and Consolidated Orders System (ARCOS).

(a) *Reports generally.* All reports required by this section shall be filed with the Pharmaceutical Investigations Section, Office of Diversion Control, Drug Enforcement Administration on DEA Form 333, or on media which contains the data required by DEA Form 333 and which is acceptable to the Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address.

* * * * *

(f) * * *

(1) A registered institutional practitioner that repackages or relabels exclusively for distribution or that distributes exclusively to (for dispensing by) agents, employees, or affiliated institutional practitioners of the registrant may be exempted from filing reports under this section by applying to the Pharmaceutical Investigations Section, Office of Diversion Control, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address.

* * * * *

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 21. The authority citation for part 1308 is revised to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 22. Revise § 1308.01 to read as follows:

§ 1308.01 Scope of part 1308.

Schedules of controlled substances established by section 202 of the Act (21 U.S.C. 812) and nonnarcotic substances, chemical preparations, veterinary anabolic steroid implant products, prescription products, anabolic steroid products, and cannabis plant material and products made therefrom that contain tetrahydrocannabinols excluded pursuant to section 201 of the Act (21 U.S.C. 811), as they are changed, updated, and republished from time to time, are set forth in this part.

§ 1308.21 [Amended]

■ 23. In § 1308.21(a), remove "Office of Diversion Control, Drug Enforcement Administration" and add in its place "Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration".

§ 1308.23 [Amended]

■ 24. In § 1308.23(b), remove "Office of Diversion Control, Drug Enforcement Administration" and add in its place "Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration".

§ 1308.25 [Amended]

■ 25. In § 1308.25(a), remove "Office of Diversion Control, Drug Enforcement Administration" and add in its place "Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration".

§ 1308.31 [Amended]

■ 26. In § 1308.31(a), remove "Office of Diversion Control, Drug Enforcement Administration" and add in its place "Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration".

§ 1308.33 [Amended]

■ 27. In § 1308.33(b), remove "Office of Diversion Control, Drug Enforcement Administration" and add in its place "Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration".

■ 28. Revise § 1308.49 to read as follows:

§ 1308.49 Temporary scheduling.

(a) Pursuant to 21 U.S.C. 811(h) and without regard to the requirements of 21 U.S.C. 811(b) relating to the scientific and medical evaluation of the Secretary of Health and Human Services, the Drug Enforcement Administration may place a substance into Schedule I on a temporary basis, if it determines that such action is necessary to avoid an imminent hazard to the public safety. An order issued under this section may not be effective before the expiration of 30 calendar days from:

(1) The date of publication by the Administration of a notice in the **Federal Register** of its intention to issue such order and the grounds upon which such order is to be issued, and

(2) The date the Administration has transmitted notification to the Secretary of Health and Human Services of the Administration's intention to issue such order.

(b) An order issued under this section will be vacated upon the conclusion of a subsequent rulemaking proceeding initiated under section 201(a) (21 U.S.C. 811(a)) with respect to such substance or at the end of two years from the effective date of the order scheduling the substance, except that during the pendency of proceedings under section 201(a) (21 U.S.C. 811(a)) with respect to the substance, the Administration may extend the temporary scheduling for up to one year.

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS

■ 29. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 823, 824, 830, 871(b), 875, 877, 886a, 952, 953, 957, 958.

■ 30. Revise § 1309.26(a)(1) to read as follows:

§ 1309.26 Exemption of law enforcement officials.

(a) * * *

(1) Any officer or employee of the Administration, any customs officer, any officer or employee of the U.S. Food and Drug Administration, and any Federal or Insular officer who is lawfully engaged in the enforcement of any federal law relating to listed chemicals, controlled substances, drugs, or customs, and is duly authorized to possess and distribute List I chemicals in the course of his/her official duties; and

* * * * *

■ 31. Revise § 1309.32(d) to read as follows:

§ 1309.32 Application forms; contents; signature.

* * * * *

(d) Each application for registration must include the Administration Chemical Code Number, as set forth in § 1310.02 of this chapter, for each List I chemical to be manufactured, distributed, imported, or exported.

* * * * *

§ 1309.46 [Amended]

■ 32. In § 1309.46(d), remove "§ 1309.54" and add in its place "§ 1309.53".

§ 1309.51 [Amended]

■ 33. In § 1309.51(a), remove "1309.57" and add in its place "1309.55".

■ 34. Revise § 1309.71(b)(5) and (7) to read as follows:

§ 1309.71 General security requirements.

* * * * *

(b) * * *

(5) The extent of unsupervised public access to the facility;

* * * * *

(7) The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel in areas where List I chemicals are processed or stored; and

* * * * *

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES; IMPORTATION AND EXPORTATION OF CERTAIN MACHINES

■ 35. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 36. Revise the heading of part 1310 to read as set forth above.

■ 37. Amend § 1310.03 as follows:

■ a. In paragraph (b) by removing "Section 1310.05" and adding in its place "§ 1310.05"; and

■ b. Revising paragraph (c) to read as follows:

§ 1310.03 Persons required to keep records and file reports.

* * * * *

(c) Each regulated person who engages in a transaction with a nonregulated person which involves ephedrine, pseudoephedrine, phenylpropanolamine, or gamma hydroxybutyric acid (including drug products containing these chemicals or controlled substance), and uses or attempts to use the U.S. Postal Service or any private or commercial carrier must, on a monthly basis, report to the Administration each such transaction conducted during the previous month as specified in §§ 1310.05(e) and 1310.06(k) on DEA Form 453 through the DEA Office of Diversion Control secure network application. Each regulated person who engages in an export transaction which involves ephedrine, pseudoephedrine, phenylpropanolamine, or gamma hydroxybutyric acid (including drug products containing these chemicals or controlled substance), and uses or attempts to use the U.S. Postal Service or any private or commercial carrier must, on a monthly basis, report each such transaction conducted during the previous month as specified in §§ 1310.05(e) and 1310.06(k) on DEA Form 453 through the DEA Office of Diversion Control secure network application.

* * * * *

■ 38. Revise § 1310.05(a) through (e) to read as follows:

§ 1310.05 Reports.

(a)(1) Each regulated person must report to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part. The regulated person will orally report to the Special Agent in Charge of the DEA Divisional Office at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. The regulated person must file a written report of the transaction(s) with the Special Agent in Charge of the DEA Divisional Office as set forth in § 1310.06 within 15 calendar days after the regulated person becomes aware of the circumstances of the event.

(2) Each regulated person must report to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located any proposed regulated transaction with a person whose description or other identifying characteristic the Administration has previously furnished to the regulated person. The regulated person will orally report to the Special Agent in Charge of the DEA Divisional Office at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved. A transaction may not be completed with a person whose description or identifying characteristic has previously been furnished to the regulated person by the Administration unless the transaction is approved by the Administration.

(b)(1) Each regulated person must report to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person. The regulated person will orally report to the Special Agent in Charge of the DEA Divisional Office at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved. Unless the loss or disappearance occurs during an import or export transaction, the supplier is responsible for reporting all in-transit losses of any listed chemical by their agent or the common or contract carrier. In an import transaction, once a shipment has been released by the customs officer at the port of entry, the importer is responsible for reporting all in-transit losses of any listed chemical by their agent or the common or contract carrier. In an export transaction, the exporter is responsible for reporting all in-transit losses of any listed chemical by their agent or the common or contract carrier until the shipment has been released by the customs officer at the port of export.

The regulated person must also file a complete and accurate DEA Form 107, in accordance with § 1310.06(d), with the Administration through the DEA Office of Diversion Control secure network application within 15 calendar days after becoming aware of the circumstances requiring the report. Unusual or excessive losses or disappearances must be reported whether or not the listed chemical is subsequently recovered or the responsible parties are identified and action taken against them. When determining whether a loss or disappearance of a listed chemical was unusual or excessive, the regulated persons should consider, among others, the following factors:

(i) The actual quantity of a listed chemical;

(ii) The specific listed chemical involved;

(iii) Whether the loss or disappearance of the listed chemical can be associated with access to those listed chemicals by specific individuals, or whether the loss or disappearance can be attributed to unique activities that may take place involving the listed chemical;

(iv) A pattern of losses or disappearances over a specific time period, whether the losses or disappearances appear to be random, and the result of efforts taken to resolve the losses.

(v) If known, the regulated person should also consider whether the specific listed chemical was a likely candidate for diversion as well as local trends and other indicators of the diversion potential of the listed chemical.

(2) Each regulated person must orally report any domestic regulated transaction in a tableting machine or an encapsulating machine to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located when the order is placed with the seller. The regulated person also must file a report of the transaction (on DEA Form 452) with the Administration through the DEA Office of Diversion Control secure network application within 15 calendar days after the order has been shipped by the seller. A report (DEA Form 452) may list more than one machine for a single transaction. Upon receipt and review, the Administration will assign a completed report a transaction identification number. The report will not be deemed filed until a transaction identification number has been issued by the Administration.

(c) *Imports and exports of tableting machines and encapsulating machines.* (1) Each regulated person who imports or exports a tableting machine, or encapsulating machine, must file a report of such importation or exportation on DEA Form 452 with the Administration through the DEA Office of Diversion Control secure network application, at least 15 calendar days before the anticipated arrival at the port of entry or port of export. In order to facilitate the importation or exportation of any tableting machine or encapsulating machine and implement the purpose of the Act, regulated persons may report to the Administration as far in advance as possible. A separate report (DEA Form 452) must be filed for each shipment, in accordance with § 1310.06(e). Upon receipt and review, the Administration will assign a completed report a transaction identification number. The report will not be deemed filed until a transaction identification number has been issued by the Administration. The importer or exporter may only proceed with the transaction once the transaction identification number has been issued. Any tableting machine or encapsulating machine may be imported or exported if that machine is needed for medical, commercial, scientific, or other legitimate uses. However, an importation or exportation of a tableting machine or encapsulating machine may not be completed with a person whose description or identifying characteristic has previously been furnished to the regulated person by the Administration unless the transaction is approved by the Administration.

(2) *Denied release at the port of entry.* In the event that a shipment of tableting or encapsulating machine(s) has been denied release by a customs officer at the port of entry for any reason, the importer who attempted to import the shipment must, within 24 hours of the denial, report to the Administration that the shipment was denied, the basis for denial, and such other information as is required by § 1310.06(g). Such report must be transmitted to the Administration through the DEA Office of Diversion Control secure network application. Upon the importer's report of a denied entry, DEA will assign the report a transaction identification number and the original import notification will be void and of no effect. No shipment of tableting machines or encapsulating machines denied entry for any reason will be allowed entry without a subsequent refiling of an amended DEA Form 452 by the regulated person. In such circumstances, the regulated person may proceed with the release of the tableting machines or encapsulating machines upon receipt of a transaction identification number for the refiled and amended DEA Form 452 without regard to the 15-day advance filing requirement in paragraph (c)(1) of this section, so long as the article is otherwise cleared for entry under U.S. customs laws.

(d) Each regulated bulk manufacturer of a listed chemical must submit manufacturing, inventory and use data on an annual basis as set forth in § 1310.06(j). This data must be submitted annually to the Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, on or before the 15th day of March of the year immediately following the calendar year for which submitted. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. A business entity which manufactures a listed chemical may elect to report separately by individual location or report as an aggregate amount for the entire business entity provided that they inform the DEA of which method they will use. This reporting requirement does not apply to drugs or other products that are exempted under paragraph (1)(iv) or (v) of the definition of regulated transaction in § 1300.02 of this chapter except as set forth in § 1310.06(i)(5). Bulk manufacturers that produce a listed chemical solely for internal consumption are not required to report for that listed chemical. For purposes of these reporting requirements, internal consumption consists of any quantity of a listed chemical otherwise not available for further resale or distribution. Internal consumption includes (but is not limited to) quantities used for quality control testing, quantities consumed in-house, or production losses. Internal consumption does not include the quantities of a listed chemical consumed in the production of exempted products. If an existing standard industry report contains the information required in § 1310.06(j) and such information is separate or readily retrievable from the report, that report may be submitted in satisfaction of this requirement. Each report must be submitted to the DEA under company letterhead and signed by an appropriate, responsible official. For purposes of this paragraph only, the term regulated bulk manufacturer of a listed chemical means a person who manufactures a listed chemical by means of chemical synthesis or by extraction from other substances. The term bulk manufacturer does not include persons whose sole activity consists of the repackaging or relabeling of listed chemical products or the manufacture of drug dosage forms of products which contain a listed chemical.

(e) Each regulated person required to report pursuant to § 1310.03(c) must file a report containing the transaction identification number for each such transaction (if the regulated person is required to obtain a transaction identification number under part 1313 of this chapter) and information set forth in § 1310.06(k), on or before the 15th day of each month following the month in which the distributions took place.

* * * * *

■ 39. Revise § 1310.06 to read as follows:

§ 1310.06 Content of records and reports.

(a) Each record required by § 1310.03(a) must include the following:

(1) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.), and, if required, DEA registration number of each party to the regulated transaction.

(2) The date of the regulated transaction.

(3) The quantity, chemical name, and, if applicable, National Drug Code (NDC) number. If NDC number is not applicable, the form of packaging of the listed chemical or a description of the tableting machine or encapsulating machine (including make, model serial number, if any, and whether the machine is manual or electric).

(4) The method of transfer (company truck, picked up by customer, etc.).

(5) The type of identification used by the purchaser and any unique number on that identification.

(b) For purposes of this section, normal business records will be considered adequate if they contain the information listed in paragraph (a) of this section and are readily retrievable from other business records of the regulated person. For prescription drug products, prescription and hospital records kept in the normal course of medical treatment will be considered adequate for satisfying the requirements of paragraph (a) of this section with respect to dispensing to patients, and records required to be maintained pursuant to the U.S. Food and Drug Administration regulations relating to the distribution of prescription drugs, as set forth in 21 CFR part 205, will be considered adequate for satisfying the requirements of paragraph (a) of this section with respect to distributions.

(c)(1) Each report required by § 1310.05(a) must include the information as specified by § 1310.06(a), the basis for making the report, and, where obtainable, the registration number of the other party, if such party is registered. A report of an uncommon method of payment or delivery submitted in accordance with § 1310.05(a)(1) must also include a reason why the method of payment or delivery was uncommon.

(2) A suggested format for the reports in § 1310.05(a)(1) is provided below:

Supplier:
Registration Number (if registered) ______
Name ______
Address ______
City ______
State ______
Zip ______
Contact Information: ______

Purchaser:
Registration Number (if registered) ______
Name ______
Address ______
City ______
State ______
Zip ______
Contact Information ______
Identification ______

Shipping Address (if different than purchaser Address):
Street ______
City ______
State ______
Zip ______
Date of Shipment ______

Description of Listed Chemical:
Chemical Name ______
Quantity ______
National Drug Code (NDC) Number(s), or Form(s) of Packaging ______

Other:
The basis (*i.e.,* reason) for making the report: ______
Any additional pertinent information: ______

(d) Each report of an unusual or excessive loss or disappearance of a listed chemical required by § 1310.05(b)(1) (on DEA Form 107), must include the following information:

(1) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.), and, if applicable, DEA registration number of each party to the regulated transaction.

(2) The date (or estimated date) on which unusual or excessive loss or disappearance occurred, and the actual date on which the unusual or excessive loss or disappearance was discovered by the regulated person.

(3) The quantity, chemical name, and National Drug Code (NDC) number, if applicable or if not the form of packaging of the listed chemical.

(4) The type of business conducted by the regulated person, (*e.g.,* grocery store, pharmacy/drug store, discount department store, warehouse club or superstore, convenience store, specialty food store, gas station, mobile retail vendor, mail-order, etc.) if the regulated person is not a DEA registrant.

(e)(1) Each report of an importation of a tableting machine or an encapsulating machine required by § 1310.05(c)(1) (on DEA Form 452) must include the following information:

(i) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the regulated person; the name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the import broker or forwarding agent, if any;

(ii) A description of each machine (including make, model, serial number, if any, and whether the machine is manual or electric) and the number of machines being received;

(iii) The anticipated date of arrival at the port of entry, and the anticipated port of entry; and

(iv) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the consignor in the foreign country of exportation.

(v) The intended medical, commercial, scientific, or other legitimate use of the machine.

(vi) Any proposed changes in identifying information of the imported machines (*e.g.,* name, brand, serial number, if any, etc.) that will take place after importation.

(2) Each report of an exportation of a tableting machine or an encapsulating machine required by § 1310.05(c)(1) (on DEA Form 452) must include the following information:

(i) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the regulated person; the name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the export broker (if applicable):

(ii) A description of each machine (including make, model, serial number, if any, and whether the machine is manual or electric) and the number of machines being received;

(iii) The anticipated date of arrival at the port of export, the foreign port and country of entry; and

(iv) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the consignee in the country where the shipment is destined; the name(s)/business name(s) and address(es)/business address(es), and contact information (*e.g.*, telephone number(s), email address(es), etc.) of the intermediate consignee(s) (if any).

(f) Each report of a domestic regulated transaction in a tableting machine or encapsulating machine required by § 1310.05(b)(2) (on DEA Form 452) must include the following information:

(1) The name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) of the regulated person; the name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) of the purchaser;

(2) A description of each machine (including make, model, serial number, if any, and whether the machine is manual or electric) and the number of machines being received;

(3) Any changes made by the regulated person in identifying information of the machines (*e.g.*, name, brand, serial number, etc.).

(g) Each report of a denied release by a customs officer at the port of entry of a tableting machine or an encapsulating machine required by § 1310.05(c)(2) must include the following information: The quantity of machines denied release; a concise description of the machines denied relese; the date on which release was denied; the port where the denial of release was issued from; and the basis for the denial.

(h) *Return information.* (1) Within 30 calendar days after actual receipt of a tableting or encapsulating machine, or within 10 calendar days after receipt of a written request by the Administration to the importer, whichever is sooner, the importer must file a report with the Administration (on DEA Form 452) specifying the particulars of the transaction utilizing the DEA Office of Diversion Control secure network application. This report must include the following information: The date on which a customs officer at the port of entry released the machine(s)); the date on which the machine(s) arrived at the final destination; the port of entry where the machine(s) were actually released by a customs officer; the actual quantity of machines released by a customs officer; the actual quantity of machines that arrived at the final destination; a description of each tableting or encapsulating machine imported (including make, model, and serial number, if any); any changes in identifying information of the imported machines (*e.g.*, name, brand, serial number, if any, etc.) that will take place after importation; and any other information as the Administration may from time to time specify. Upon receipt and review, the Administration will assign a transaction identification number to a completed report. The report will not be deemed filed until the Administration has issued a transaction identification number. A single return declaration may include the particulars of both the importation and distribution. For DEA reporting purposes, import responsibilities are concluded upon the receipt of the machines by the importer. Once machines are received by the importer, domestic transaction reporting requirements commence. Distributions of tableting and encapsulating machines from the importer to their customers must be reported as domestic regulated transactions in accordance with § 1310.05(b)(2).

(2) Within 30 calendar days after the tableting or encapsulating machine is released by a customs officer at the port of export, or within 10 calendar days after receipt of a written request by the Administration to the exporter, whichever is sooner, the exporter must file a report with the Administration (on DEA Form 452) through the DEA Office of Diversion Control secure network application specifying the particulars of the transaction. This report must include the following information: The date on which the the machine(s) was(were) released by a customs officer at the port of export; the actual quantity of machines released; a description of each tableting or encapsulating machine released (including make, model, serial number, if any, and whether the machine is manual or electric); and any other information as the Administration may from time to time specify.

(i) Declared exports of machines which are refused, rejected, or otherwise deemed undeliverable may be returned to the U.S. exporter of record. A brief written report outlining the circumstances must be filed with the Administration through the DEA Office of Diversion Control secure network application, following the return at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved. This provision does not apply to shipments that have cleared foreign customs, been delivered, and accepted by the foreign consignee. Returns to third parties in the United States will be regarded as imports.

(j) Each annual report required by § 1310.05(d) must provide the following information for each listed chemical manufactured:

(1) The name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) and chemical registration number (if any) of the manufacturer.

(2) The aggregate quantity of each listed chemical that the company manufactured during the preceding calendar year.

(3) The year-end inventory of each listed chemical as of the close of business on the 31st day of December of each year. (For each listed chemical, if the prior period's ending inventory has not previously been reported to DEA, this report should also detail the beginning inventory for the period.) For purposes of this requirement, inventory shall reflect the quantity of listed chemicals, whether in bulk or non-exempt product form, held in storage for later distribution. Inventory does not include waste material for destruction, material stored as an in-process intermediate or other in-process material.

(4) The aggregate quantity of each listed chemical used for internal consumption during the preceding calendar year, unless the chemical is produced solely for internal consumption.

(5) The aggregate quantity of each listed chemical manufactured which becomes a component of a product exempted from paragraph (1)(iv) or (v) of the definition of regulated transaction in § 1300.02 of this chapter during the preceding calendar year.

(6) Data shall identify the specific isomer, salt or ester when applicable but quantitative data shall be reported as anhydrous base or acid in kilogram units of measure.

(k) Each monthly report required by §§ 1310.03(c) and 1310.05(e) (on DEA Form 453) must provide the following information for each transaction:

(1) Supplier name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) and registration number.

(2) Purchaser's name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.).

(3) Name/business name, address/business address shipped to (if different from purchaser's name/address).

(4) Chemical name, National Drug Code (NDC) number, if applicable, and total amount shipped.

(5) Date of shipment.

(6) Product name (if drug product).

(7) Dosage form (if drug product) (*e.g.*, pill, tablet, liquid).

(8) Dosage strength (if drug product) (*e.g.*, 30mg, 60mg, per dose etc.).

(9) Number of dosage units (if drug product) (*e.g.*, 100 doses per package).

(10) Package type (if drug product) (*e.g.*, bottle, blister pack, etc.).

(11) Number of packages (if drug product) (*e.g.*, 10 bottles).

(12) Lot number (if drug product).

(l) Information provided in reports required by § 1310.05(e) which is exempt from disclosure under 5 U.S.C. 552(a), by reason of 5 U.S.C. 552(b)(6), will be provided the same protections from disclosure as are provided in section 310(c) of the Act (21 U.S.C. 830(c)) for confidential business information.

§ 1310.13 [Amended]

■ 40. In § 1310.13(b), remove "Office of Diversion Control, Drug Enforcement Administration" and add in its place "Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration".

PART 1312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES

■ 41. The authority citation for part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

■ 42. Add § 1312.03 to precede the undesignated center heading Importation of Controlled Substances to read as follows:

§ 1312.03 Forms applicable to this part.

Form	Access/ submission
DEA Form 35, Permit to Import	electronic.
DEA Form 36, Permit to Export	electronic.
DEA Form 161, Application for Permit to Export Controlled Substances	electronic.
DEA Form 161R, Application for Permit to Export Controlled Substances For Subsequent Reexport	electronic.
DEA Form 161R–EEA, Application for Permit to Export Controlled Substances for Subsequent Reexport among members of the European Economic Area.	electronic.
DEA Form 236, Controlled Substances Import/Export Declaration	electronic.
DEA Form 357, Application for Permit to Import Controlled Substances for Domestic And/Or Scientific Purposes	electronic.

■ 43. Revise § 1312.11 to read as follows:

§ 1312.11 Requirement of authorization to import.

(a) No person shall import, or cause to be imported, into the customs territory of the United States from any place outside thereof (but within the United States), or into the United States from any place outside thereof, any controlled substances listed in Schedule I or II, or any narcotic controlled substance listed in Schedule III, IV, or V, or any non-narcotic controlled substance listed in Schedule III which the Administrator has specifically designated by regulation in § 1312.30 or any non-narcotic controlled substance listed in Schedule IV or V which is also listed in Schedule I or II of the Convention on Psychotropic Substances, 1971, unless and until such person is properly registered under the Act (or, in accordance with part 1301 of this chapter, exempt from registration) and the Administration has issued him or her a permit to do so in accordance with § 1312.13.

(b) No person shall import, or cause to be imported, into the customs territory of the United States from any place outside thereof (but within the United States), or into the United States from any place outside thereof, any non-narcotic controlled substance listed in Schedule III, IV, or V, excluding those described in paragraph (a) of this section, unless and until such person is properly registered under the Act (or, in accordance with part 1301 of this chapter, exempt from registration) and has filed an import declaration to do so in accordance with § 1312.18.

(c) A separate permit or declaration is required for each shipment of a controlled substance to be imported.

■ 44. Revise § 1312.12 to read as follows:

§ 1312.12 Application for import permit; return information.

(a) Registered importers, other registrants authorized to import as a coincident activity of their registrations, and persons who in accordance with part 1301 of this chapter are exempt from registration, seeking to import a controlled substance in schedule I or II; any narcotic drug in schedule III, IV, or V; any non-narcotic drug in schedule III that has been specifically designated by regulation in § 1312.30 of this part; or any non-narcotic substance listed in schedule IV or V that is also listed in schedule I or II of the Convention on Psychotropic Substances, 1971, must submit an application for a permit to import controlled substances on DEA Form 357. All applications and supporting materials must be submitted to the Administration through the DEA Office of Diversion Control secure network application. The application must be signed and dated by the importer and must contain the importer's registered address to which the controlled substances will be imported.

(b) The applicant must include on the DEA Form 357 the registration number of the importer and a detailed description of each controlled substance to be imported including the drug name, dosage form, National Drug Code (NDC) number, the Administration Controlled Substance Code Number as set forth in part 1308 of this chapter, the number and size of the packages or containers, the name and quantity of the controlled substance contained in any finished dosage units, and the quantity of any controlled substance (expressed in anhydrous acid, base or alkaloid) given in kilograms or parts thereof. The application must also include the following:

(1) The name/business name, address/ business address, contact information (*e.g.,* telephone number(s), email address(es), etc.), and business of the consignor, if known at the time the application is submitted, but if unknown at that time, the fact should be indicated and the name and address afterwards furnished to the Administration as soon as ascertained by the importer;

(2) The foreign port and country of initial exportation (*i.e.,* the place where the article will begin its journey of exportation to the United States);

(3) The port of entry into the United States;

(4) The latest date said shipment will leave said foreign port or country;

(5) The stock on hand of the controlled substance desired to be imported;

(6) The name of the importing carrier or vessel (if known, or if unknown it should be stated whether the shipment will be made by express, freight, or otherwise, imports of controlled substances in Schedules I or II and

narcotic drugs in Schedules III, IV, or V by mail being prohibited);

(7) The total tentative allotment to the importer of such controlled substance for the current calendar year;

(8) The total number of kilograms of said allotment for which permits have previously been issued and the total quantity of controlled substance actually imported during the current year to date.

(c) If desired, alternative foreign ports of exportation within the same country may be indicated upon the application (*e.g.,* 1. Kolkata, 2. Mumbai). If a permit is issued pursuant to such application, it will bear the names of the two ports in the order given in the application and will authorize shipment from either port. Alternative ports in different countries will not be authorized in the same permit.

(d) *Return information.* Within 30 calendar days after actual receipt of a controlled substance at the importer's registered location, or within 10 calendar days after receipt of a written request by the Administration to the importer, whichever is sooner, the importer must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the transaction. This report must include the following information: The date the controlled substance was released by a customs officer at the port of entry); the date on which the controlled substance arrived at the registered location; the actual quantity of the controlled substance released by a customs officer at the port of entry; and the actual quantity of the controlled substance that arrived at the registered location. Upon receipt and review, the Administration will assign a transaction identification number to a completed report. The report will not be deemed filed until the Administration has issued a transaction identification number.

(e) *Denied release at the port of entry.* In the event that a shipment of controlled substances has been denied release by a customs officer at the port of entry for any reason, the importer who attempted to have the shipment released must, within 24-hours of the denial, report to the Administration that the shipment was denied and the reason for denial. Such report must be transmitted to the Administration through the DEA Office of Diversion Control secure network application. This report must include the following information: The quantity of the controlled substance denied release; the date on which release was denied; and the basis for the denied release. Upon the importer's report of a denied release at the port of entry, the DEA will assign the report a transaction identification number and the import permit will be void and of no effect. No shipment of controlled substances denied release for any reason will be allowed to be released into the United States unless the importer submits a new DEA Form 357 and the Administration issues a new import permit.

■ 45. Revise § 1312.13(e) to read as follows:

§ 1312.13 Issuance of import permit.

* * * * *

(e) If an importation is approved, the Administrator will issue an import permit bearing his or her signature or that of his or her delegate. Each permit will be assigned a unique permit number. A permit must not be altered or changed by any person after being signed. Any change or alteration upon the face of any permit after it has been signed renders it void and of no effect. Permits are not transferable. The Administrator or his/her delegate will date and certify on each permit that the importer named therein is thereby permitted as a registrant under the Act, to import, through the port of entry named, one shipment of not to exceed the specified quantity of the named controlled substances, shipment to be made before a specified date. Only one shipment may be made on a single import permit. Split shipments are prohibited. The permit must state that the Administration is satisfied that the consignment proposed to be imported is required for legitimate purposes.

* * * * *

■ 46. Revise § 1312.14 to read as follows:

§ 1312.14 Distribution of import permits.

The Administration shall transmit the import permit to the competent national authority of the exporting country and shall make an official record of the import permit available to the importer through secure electronic means. The importer, or their agent, must submit an official record of the import permit and/or required data concerning the import transaction to a customs officer at the port of entry in compliance with all import control requirements of agencies with import control authorities under the Act or statutory authority other than the Controlled Substances Import and Export Act. The importer must maintain an official record of the import permit (available from the DEA Office of Diversion Control secure network application after issuance) in accordance with part 1304 of this chapter as the record of authority for the importation and shall transmit an official record of the permit to the foreign exporter. If required by the foreign competent national authority, the importer shall ensure that an official record of the import permit is provided (*e.g.,* by transmitting an official record of the permit to the foreign exporter who shall transmit such record to the competent national authority of the exporting county). The importer must ensure that an official record of the permit accompanies the shipment of controlled substances to its final destination, the registered location of the importer (*i.e.,* drop shipments are prohibited).

§ 1312.15 [Amended].

■ 47. Amend § 1312.15 as follows:

■ a. In paragraph (a), remove "the U.S. Customs Service" and add in its place "the U.S. Customs and Border Protection or customs service of an Insular Area", and add ", in accordance with § 1312.16(a)" to the end of the first sentence; and

■ b. In paragraph (b), remove "the U.S. Customs Service" and add in its place "the U.S. Customs and Border Protection or customs service of an Insular Area", and remove "Director of the Administration" from the last sentence and add in its place "Administrator".

■ 48. Revise § 1312.16 to read as follows:

§ 1312.16 Amendment, cancellation, expiration of import permit.

(a) Importers may only request that an import permit or application for an import permit be amended in accordance with paragraphs (a)(1) through (7) of this section. Requests for an amendment must be submitted through the DEA Office of Diversion Control secure network application. Except as provided in paragraph (a)(5) of this section and § 1312.15(a), importers must submit all requests for an amendment at least one full business day in advance of the date of release by a customs officer. Importers must specifically request that an amendment be made; supplementary information submitted by an importer through the DEA Office of Diversion Control secure network application will not automatically trigger the amendment process. While the request for an amendment is being reviewed by the Administration, the original permit will be temporarily stayed and may not be used to authorize entry of a shipment of controlled substances. If the importer's request for an amendment to an issued permit is granted by the Administration, the Administration will immediately cancel the original permit and re-issue the permit, as amended, with a revised permit number. The DEA and importer will distribute the amended permit in accordance with § 1312.14. If a request for an amendment is denied by the Administration, the temporary stay will be lifted; once lifted, the originally issued permit may immediately be used to authorize entry of a shipment in accordance with the terms of the permit, subject to the shipment being compliant with all other applicable laws.

(1) An importer may request that an import permit or application for a permit be amended to change the National Drug Control number, description of the packaging, or trade name of the product, so long as the description is for the same basic class of controlled substance as in the original permit.

(2) An importer may request that an import permit or application for a permit be amended to change the proposed port of entry, the date of release by a customs officer, or the method of transport.

(3) An importer may request that an import permit or application for a permit be amended to change the justification provided as to why an import shipment is needed to meet the legitimate scientific or medical needs of the United States.

(4) An importer may request that an import permit or application for a permit be amended to change any registrant notes.

(5) Prior to departure of the shipment from its original foreign location, an importer may request that an import permit or application for a permit be amended to increase the total base weight of a controlled substance. At the U.S. port of entry, an importer may request that an import permit be amended in accordance with § 1312.15(a). Importers are not required to amend an import permit for the sole purpose of decreasing the total base weight of a controlled substance authorized to be imported. However, the balance of any unimported authorized quantity of controlled substances on an import permit is void upon entry of a shipment on the issued permit or upon expiration of the unused permit in accordance with paragraph (b) of this section, whichever is sooner. Other than for an amendment to an import permit under § 1312.15(a), importers must submit a request for an amendment to increase the total base weight of a controlled substance at least three business days in advance of the date of release by a customs officer.

(6) An importer may request that an import permit be amended to remove a controlled substance from the permit. However, an importer may not amend an import permit to add or replace a controlled substance/Administration controlled substance code number to the item(s) to be imported. Importers who desire to import a different controlled substance than that contained on their issued import permit or permit application must submit a request for the permit or permit application to be canceled and request a new permit in accordance with § 1312.12.

(7) An importer may not amend the importer's name (as it appears on their DEA certificate of registration) or the name of the foreign exporter as provided in the DEA Form 357. Importers who need to make any changes to any of these fields must submit a request for the permit or permit application to be canceled and request a new permit in accordance with § 1312.12.

(b) An import permit will be void and of no effect after the expiration date specified therein, and in no event will the date be more than 180 calendar days after the date the permit is issued. Amended import permits will retain the original expiration date.

(c) An import permit may be canceled after being issued, at the request of the importer submitted to the Administration through the DEA Office of Diversion Control secure network application, provided that no shipment has been made thereunder. Nothing in this part will affect the right, hereby reserved by the Administration, to cancel a permit at any time for proper cause.

■ 49. In § 1312.18:

■ a. Revise the section heading;

■ b. Revise paragraphs (b), (c) introductory text, and (c)(3); and

■ c. Add paragraphs (e) through (h);

The revisions and additions read as follows:

§ 1312.18 Import declaration.

* * * * *

(b) Any person registered or authorized to import and seeking to import any non-narcotic controlled substance listed in Schedules III, IV, or V which is not subject to the requirement of an import permit as described in paragraph (a) of this section, must file a controlled substances import declaration (DEA Form 236) with the Administration through the DEA Office of Diversion Control secure network application not later than 15 calendar days prior to the anticipated date of release by a customs officer and distribute an official record of the declaration as hereinafter directed in § 1312.19. The declaration must be signed and dated by the importer and must specify the address of the final destination for the shipment, which must be the importer's registered location. Upon receipt and review, the Administration will assign a transaction identification number to each completed declaration. The import declaration is not deemed filed, and therefore is not valid, until the Administration has issued a transaction identification number. The importer may only proceed with the import transaction once the transaction identification number has been issued.

(c) DEA Form 236 must include the following information:

* * * * *

(3) The anticipated date of release by a customs officer at the port of entry, the foreign port and country of exportation to the United States, the port of entry, and the name, address, and registration number of the recipient in the United States; and

* * * * *

(e) *Return information.* Within 30 calendar days after actual receipt of a controlled substance at the importer's registered location, or within 10 calendar days after receipt of a written request by the Administration to the importer, whichever is sooner, the importer must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the transaction. This report must include the following information: The date on which the controlled substance was released by a customs officer at the port of entry; the date on which the controlled substance arrived at the registered location; the actual quantity of the controlled substance released by a customs officer at the port of entry; the actual quantity of the controlled substance that arrived at the registered location; and the actual port of entry. Upon receipt and review, the Administration will assign a transaction identification number to a completed report. The report will not be deemed filed until the Administration has issued a transaction identification number.

(f) An importer may amend an import declaration in the same circumstances in which an importer may request amendment to an import permit, as set forth in § 1312.16(a)(1) through (7). Amendments to declarations must be submitted through the DEA Office of Diversion Control secure network application. Except as provided in § 1312.16(a)(5) and § 1312.15(a), importers must submit all amendments at least one full business day in advance of the date of release by a customs officer. Importers must specifically note that an amendment is being made; supplementary information submitted by an importer through the DEA Office of Diversion Control secure network application will not automatically be considered an amendment. While the amendment is being processed by the Administration, the original declaration will be temporarily stayed and may not be used to authorize release of a shipment of controlled substances. Upon receipt and review, the Administration will assign each completed amendment a transaction identification number. The amendment will not be deemed filed until the Administration issues a transaction identification number. The DEA and importer will distribute the amended declaration in accordance with § 1312.19. A filed amendment will not change the date that the declaration becomes void and of no effect pursuant to § 1312.18(g).

(g) An import declaration may be canceled after being filed with the Administration, at the request of the importer by the importer submitting to the Administration the request through the DEA Office of Diversion Control secure network application, provided that no shipment has been made thereunder. Import declarations shall become void and of no effect 180 calendar days after the date the declaration is deemed filed with the Administration.

(h) *Denied release at the port of entry.* In the event that a shipment of controlled substances has been denied release by a customs officer at the port of entry for any reason, the importer who attempted to have the shipment released, within 24-hours of the denial, report to the Administration that the shipment was denied release and the reason for denial. Such report must be transmitted to the Administration through the DEA Office of Diversion Control secure network application. This report must include the following information: The quantity of the controlled substance denied release; the date on which release was denied; and the basis for the denied release. Upon the importer's report of a denied release, the DEA will assign the report a transaction identification number and the import declaration will become void and of no effect. No shipment of controlled substances denied release for any reason will be allowed to be released into the United States until the importer has filed a new import declaration and the Administration has issued a new transaction identification number.

■ 50. Revise § 1312.19 to read as follows:

§ 1312.19 Distribution of import declaration.

The importer must furnish an official record of the declaration (available through the DEA Office of Diversion Control secure network application after the Administration issues a transaction identification number) to the foreign shipper. The foreign shipper must submit an official record of the declaration to the competent national authority of the exporting country, if required as a prerequisite to export authorization. The importer, or their agent, must submit an official record of the declaration and/or required data concerning the import transaction to a customs officer at the port of entry in compliance with all import control requirements of agencies with import control authorities under the Act or statutory authority other than the Controlled Substances Import and Export Act. The importer must ensure that an official record of the declaration accompanies the shipment to its final destination, which must only be the registered location of the importer (*i.e.,* drop shipments are prohibited). The importer must maintain an official record of the declaration in accordance with part 1304 of this chapter.

■ 51. Revise § 1312.21 to read as follows:

§ 1312.21 Requirement of authorization to export.

(a) No person shall in any manner export, or cause to be exported, from the United States any controlled substance listed in Schedule I or II, or any narcotic controlled substance listed in Schedule III or IV, or any non-narcotic controlled substance in Schedule III which the Administrator has specifically designated by regulation in § 1312.30 or any non-narcotic controlled substance in Schedule IV or V which is also listed in Schedule I or II of the Convention on Psychotropic Substances, 1971, unless and until such person is properly registered under the Act (or, in accordance with part 1301 of this chapter, exempt from registration) and the Administrator has issued him or her a permit to do so in accordance with § 1312.23.

(b) No person shall in any manner export, or cause to be exported, from the United States any non-narcotic controlled substance listed in Schedule III, IV, or V, excluding those described in paragraph (a) of this section, or any narcotic controlled substance listed in Schedule V, unless and until such person is properly registered under the Act (or, in accordance with part 1301 of this chapter, exempt from registration) and has furnished an export declaration as provided by section 1003 of the Act (21 U.S.C. 953(e)) to the Administration in accordance with § 1312.28.

(c) A separate permit or declaration is required for each shipment of controlled substance to be exported.

■ 52. Revise § 1312.22 to read as follows:

§ 1312.22 Application for export or reexport permit; return information.

(a) Registered exporters, and persons who in accordance with part 1301 of this chapter are exempt from registration, seeking to export controlled substances must submit an application for a permit to export controlled substances on DEA Form 161. Registered exporters, and persons who in accordance with part 1301 of this chapter are exempt from registration, seeking to reexport controlled substances must submit an application for a permit to reexport controlled substances on DEA Form 161R or DEA Form 161R–EEA, whichever applies. All applications and supporting materials must be submitted to the Administration through the DEA Office of Diversion Control secure network application. The application must be signed and dated by the exporter and contain the exporter's registered address from which the controlled substances will be exported. Controlled substances may not be exported until a permit number has been issued.

(b) Exports of controlled substances by mail are prohibited.

(c) *Applications.* (1) Except as provided in paragraph (c)(2) of this section, each application for a permit to export or reexport must include the following information:

(i) The exporter's name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.);

(ii) The exporter's registration number, address, and contact information (*e.g.,* telephone number(s), etc.) from which the controlled substances will be exported;

(iii) A detailed description of each controlled substance to be exported including the drug name, dosage form, National Drug Code (NDC) number, Administration Controlled Substance Code Number as set forth in part 1308 of this chapter, the number and size of the packages or containers, the name and quantity of the controlled substance contained in any finished dosage units, and the quantity of any controlled substance (expressed in anhydrous acid, base, or alkaloid) given in kilograms or parts thereof;

(iv) The name/business name, address/business address, contact information (*e.g.*, telephone number(s), email address(es), etc.) and business of the consignee in the first country (the country to which the controlled substance is exported from the United States), foreign port and country of entry/first country of entry, the port of export, the anticipated date of release by a customs officer at the port of export, the name of the exporting carrier or vessel (if known, or if unknown it should be stated whether the shipment will be made by express, freight, or otherwise), the date and number, if any, of the supporting foreign import license or permit accompanying the application, and the authority by whom such foreign license or permit was issued;

(v) An affidavit that the packages or containers are labeled in conformance with obligations of the United States under international treaties, conventions, or protocols in effect at the time of the export or reexport. The affidavit shall further state that to the best of the affiant's knowledge and belief, the controlled substances therein are to be applied exclusively to medical or scientific uses within the country to which exported, will not be reexported therefrom and that there is an actual need for the controlled substance for medical or scientific uses within such country, unless the application is submitted for reexport in accordance with paragraphs (f) through (h) of this section. In the case of exportation of crude cocaine, the affidavit may state that to the best of affiant's knowledge and belief, the controlled substances will be processed within the country to which exported, either for medical or scientific use within that country or for reexportation in accordance with the laws of that country to another for medical or scientific use within that country;

(2) With respect to reexports among members of the European Economic Area in accordance with section 1003(f) of the Act (21 U.S.C. 953(f)), the requirements of paragraph (c)(1) of this section shall apply only with respect to the export from the United States to the first country and not to any subsequent export from that country to another country of the European Economic Area.

(d)(1) Except as provided in paragraph (d)(2) of this section, the applicant must also submit with the application any import license or permit or a certified copy of any such license or permit issued by the competent national authority in the country of destination, or other documentary evidence deemed adequate by the Administration, showing: that the merchandise is consigned to an authorized permittee; that it is to be applied exclusively to medical or scientific use within the country of destination; that it will not be reexported from such country (unless the application is submitted for reexport in accordance with paragraphs (f) through (h) of this section); and that there is an actual need for the controlled substance for medical or scientific use within such country or countries. If the import license or permit, or the certified copy of such, is not written in English or bilingual with another language and English, the registrant must also submit with their application a certified translation of the permit or license. For purposes of this requirement, certified translation means that the translator has signed the translation legally attesting the accuracy of the translation and the attestation has been notarized. (In the case of exportation of bulk coca leaf alkaloid, the applicant need only include with the application the material outlined in paragraph (c) of this section.)

(2) With respect to reexports among members of the European Economic Area in accordance with section 1003(f) of the Act (21 U.S.C. 953(f)), the requirements of paragraph (d)(1) of this section shall apply only with respect to the export from the United States to the first country and not to any subsequent export from that country to another country of the European Economic Area.

(e) *Return information for exports (on a DEA Form 161).* Within 30 calendar days after the controlled substance is released by a customs officer at the port of export, or within 10 calendar days after receipt of a written request by the Administration to the exporter, whichever is sooner, the exporter must report to the Administration through the DEA Office of Diversion Control secure network application the particulars of the transaction. This report must include the following information: the date on which the controlled substance left the registered location; the date on which the controlled substance was released by a customs officer at the port of export); the actual quantity of controlled substance that left the registered location; and the actual quantity of the controlled substance released by a customs officer at the port of export; the actual port of export, and any other information as the Administration may from time to time specify. Upon receipt and review, the Administration will assign a transaction identification number to a completed report. The report will not be deemed filed until the Administration has issued a transaction identification number.

(f) *Reexports outside of the European Economic Area.* Except as provided in paragraph (g), the Administration may authorize any controlled substance listed in Schedule I or II, or any narcotic drug listed in Schedule III or IV, to be exported from the United States to a country for subsequent export from that country to another country, if each of the following conditions is met, in accordance with section 1003(f) of the Act (21 U.S.C. 953(f)):

(1) Both the country to which the controlled substance is exported from the United States (referred to in this section as the "first country") and the country to which the controlled substance is exported from the first country (referred to in this section as the "second country") are parties to the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971;

(2) The first country and the second country have each instituted and maintain, in conformity with such Conventions, a system of controls of imports of controlled substances which the Administration deems adequate;

(3) With respect to the first country, the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance has been issued by the country;

(4) With respect to the second country, substantial evidence is furnished to the Administration by the applicant for the export permit that—

(i) The controlled substance is to be consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance is to be issued by the country; and

(ii) The controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country;

(5) The controlled substance will not be exported from the second country;

(6) The exporter has complied with paragraph (h) of this section and a permit to export the controlled substance from the United States has been issued by the Administration; and

(7) *Return information for reexports outside of the European Economic Area (on DEA Form 161R)*—(i) *Return information for export from the United States, for reexport.* Within 30 calendar days after the controlled substance is released by a customs officer at the port of export the exporter must file a report

with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the transaction. This report must include the following information: the date on which the controlled substance left the registered location; the date on which the controlled substance was released by a customs officer at the port of export; the actual quantity of controlled substance released by a customs officer at the port of export; and the actual port of export. Upon receipt and review, the Administration will assign a completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number. In determining whether the exporter has complied with the requirement to file within 30 calendar days, the report shall be deemed filed on the first date on which a complete report is filed.

(ii) *Return information for export from a first country that is or is not a member of the European Economic Area to a country outside of the European Economic Area; return information for export from a first country that is not a member of the European Economic Area to a member of the European Economic Area.* Within 30 calendar days after the controlled substance is exported from the first country to the second country the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the export from the first country. If the permit issued by the Administration authorized the reexport of a controlled substance from the first country to more than one second country, a report for each individual reexport is required. These reports must include the following information: name of second country; actual quantity of controlled substance shipped; and the date shipped from the first country, the actual port from which the controlled substances were shipped from the first country. Upon receipt and review, the Administration will assign each completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number.

(g) *Reexports among members of the European Economic Area (on DEA Form 161R–EEA).* The Administration may authorize any controlled substance listed in Schedule I or II, or any narcotic drug listed in Schedule III or IV, to be exported from the United States to a country of the European Economic Area for subsequent export from that country to another country of the European Economic Area, if the following conditions and the conditions of (f)(1), (2), (3) (4), and (6) are met, in accordance with section 1003(f) of the Act (21 U.S.C. 953(f)):

(1)(i) The controlled substance will not be exported from the second country, except that the controlled substance may be exported from a second country that is a member of the European Economic Area to another country that is a member of the European Economic Area, provided that the first country is also a member of the European Economic Area; and

(ii) Subsequent to any reexportation described in paragraph (g)(1)(i) of this section, a controlled substance may continue to be exported from any country that is a member of the European Economic Area to any other such country, if—

(A) The conditions applicable with respect to the first country under paragraphs (f)(1), (2), (3), (4), and (6) of this section and paragraph (g)(2) of this section are met with respect to each subsequent country from which the controlled substance is exported pursuant to this paragraph; and

(B) The conditions applicable with respect to the second country under paragraphs (f)(1), (2), (3), (4), and (6) of this section and paragraph (g)(2) of this section are met with respect to each subsequent country to which the controlled substance is exported pursuant to this paragraph.

(2) *Return information for reexports among members of the European Economic Area*—(i) *Return information for export from the United States, for reexport among members of the European Economic Area.* Exporters must comply with the return reporting requirements of paragraph (f)(7)(i) of this section.

(ii) *Reexports among members of the European Economic Area.* Within 30 calendar days after the controlled substance is exported from the first country to the second country, and within 30 calendar days of each subsequent reexport within the European Economic Area, if any, the U.S. exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the export. These reports must include the name of country to which the controlled substance was reexported, *i.e.,* another member of the European Economic Area; the actual quantity of controlled substance shipped; the date shipped from the first country, the name/business name, address/business address, contact information (*e.g.,* telephone number(s), email address(es), etc.) and business of the consignee; and the name/business name, address/business address, contact information (*e.g.,* telephone number(s), email address(es), etc.) and business of the exporter. Upon receipt and review, the Administration will assign each completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number.

(h) Where a person is seeking to export a controlled substance for reexport outside of the European Economic Area in accordance with paragraph (f) of this section, the requirements of paragraphs (h)(1) through (7) of this section shall apply in addition to (and not in lieu of) the requirements of paragraphs (a) through (d) of this section. Where a person is seeking to export a controlled substance for reexport among members of the European Economic Area in accordance with paragraph (g) of this section, the requirements of paragraph (h)(4) of this section shall apply in addition to (and not in lieu of) the requirements of paragraphs (a) through (d) of this section.

(1) Bulk substances will not be reexported in the same form as exported from the United States, *i.e.,* the material must undergo further manufacturing process. This further manufactured material may only be reexported to a second country.

(2) Finished dosage units, if reexported, must be in a commercial package, properly sealed and labeled for legitimate medical use in the second country.

(3) Any proposed reexportation must be made known to the Administration at the time the initial DEA Form 161R is submitted. In addition, the following information must also be provided where indicated on the form:

(i) Whether the drug or preparation will be reexported in bulk or finished dosage units;

(ii) The product name, dosage strength, commercial package size, and quantity;

(iii) The name of consignee, complete address, and expected shipment date, as well as the name and address of the ultimate consignee in the second country.

(4) The application must contain an affidavit that the consignee in the second country, and any country of subsequent reexport within the European Economic Area, is authorized under the laws and regulations of the second and/or subsequent country to receive the controlled substances. The

affidavit must also contain the following statements, in addition to the statements required under paragraph (c) of this section:

(i) That the packages are labeled in conformance with the obligations of the United States under the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971, and any amendments to such treaties in effect;

(ii) That the controlled substances are to be applied exclusively to medical or scientific uses within the second country, or country of subsequent reexport within the European Economic Area;

(iii) That the controlled substances will not be further reexported from the second country except as provided by paragraph (f) of section 1003 of the Act (21 U.S.C. 953(f)); and

(iv) That there is an actual need for the controlled substances for medical or scientific uses within the second country, or country of subsequent reexport within the European Economic Area.

(5) If the applicant proposes that the shipment of controlled substances will be separated into parts after it arrives in the first country and then reexported to more than one second country, the applicant must so indicate on the DEA Form 161R and provide all the information required in this section for each second country.

(6) Except in the case of reexports among countries of the European Economic Area in accordance with section 1003(f) of the Act (21 U.S.C. 953(f)), the controlled substance will be reexported from the first country to the second country (or second countries) no later than 180 calendar days after the controlled substance was released by a customs officer from the United States.

(7) Shipments that have been exported from the United States and are refused by the consignee in either the first or second country, or subsequent member of the European Economic Area, or are otherwise unacceptable or undeliverable, may be returned to the registered exporter in the United States upon authorization of the Administration. In these circumstances, the exporter in the United States must submit a written request for the return of the controlled substances to the United States with a brief summary of the facts that warrant the return, along with a completed DEA Form 357 through the DEA Office of Diversion Control secure network application. The Administration will evaluate the request after considering all the facts as well as the exporter's registration status with the Administration. If the exporter provides sufficient justification, the Administration may issue an import permit for the return of these drugs, and the exporter may then obtain an export permit from the country of original importation. The substance may not be returned to the United States until after a permit has been issued by the Administration.

(i) In considering whether to grant an application for a permit under paragraphs (f) through (h) of this section, the Administration shall consider whether the applicant has previously obtained such a permit and, if so, whether the applicant complied fully with the requirements of this section with respect to that previous permit.

(j) *Denied release at the port of export.* In the event that a shipment of controlled substances has been denied release by a customs officer at the port export from the United States for any reason, the exporter who attempted to have the shipment released must, within 24-hours of the denial, report to the Administration that the shipment was denied release and the reason for denial. Such report must be transmitted to the Administration through the DEA Office of Diversion Control secure network application. This report must include the following information: The quantity of the controlled substance denied release; the date on which release was denied; the basis for the denied release, the port from which the denial was issued, and any other information as the Administration may from time to time specify. Upon the exporter's report of a denied release, DEA will assign the report a transaction identification number and the export permit will be void and of no effect. No shipment of controlled substances denied release for any reason will be allowed to be released from the United States unless the exporter submits a new DEA Form 161, 161R, or 161R–EEA, as appropriate, and the Administration issues a new export permit.

■ 53. Revise § 1312.23(e) to read as follows:

§ 1312.23 Issuance of export permit.

* * * * *

(e) If an exportation is approved, the Administrator shall issue an export permit bearing his or her signature or that of his or her delegate. Each permit will be assigned a permit number that is a unique, randomly generated identifier. A permit shall not be altered or changed by any person after being signed. Any change or alteration upon the face of any permit after it has been signed renders it void and of no effect. Permits are not transferable. The Administrator or his/her delegate shall date and certify on each permit that the exporter named therein is thereby permitted as a registrant under the Act, to export, through the port of export named, one shipment of not to exceed the specified quantity of the named controlled substances, shipment to be made before a specified date. Only one shipment may be made on a single export permit. Split shipments are prohibited. Each export permit shall be predicated upon, *inter alia,* an import certificate or other documentary evidence issued by a foreign competent national authority.

* * * * *

■ 54. Revise § 1312.24 to read as follows:

§ 1312.24 Distribution of export permit.

The Administration shall transmit the export permit to the competent national authority of the importing country and shall make available to the exporter an official record of the export permit through secure electronic means. The exporter, or their agent, must submit an official record of the export permit and/or required data concerning the export transaction to a customs officer at the port of export in compliance with all export control requirements of agencies with export control authorities under the Act or statutory authority other than the Controlled Substances Import and Export Act. The exporter must maintain an official record of the export permit (available from the secure network application on the DEA Office of Diversion Control Web site after the Administration issues a transaction identification number) in accordance with part 1304 of this chapter as the record of authority for the exportation and shall transmit an official record of the export permit to the foreign importer. The exporter must ensure that an official record of the permit accompanies the shipment to its final destination. No shipment of controlled substances denied release for any reason shall be allowed to be released from the United States without subsequent authorization from the Administration.

■ 55. Revise § 1312.25 to read as follows:

§ 1312.25 Amendment, cancellation, expiration of export permit.

(a) Exporters may only request that an export permit or application for an export permit be amended in accordance with paragraphs (a)(1) through (7) of this section. Requests for an amendment must be submitted through the DEA Office of Diversion Control secure network application. Except as provided in paragraph (a)(5) of this section exporters must submit all requests for an amendment at least one full business day in advance of the date of release from the port of export. Exporters must specifically request that an amendment be made; supplementary information submitted by an exporter through the DEA Office of Diversion Control secure network application will not automatically trigger the amendment process. While the request for an amendment is being reviewed by the Administration, the original permit will be temporarily stayed and may not be used to authorize release of a shipment of controlled substances. If the exporter's request for an amendment to an issued permit is granted by the Administration, the Administration will immediately cancel the original permit and re-issue the permit, as amended, with a revised permit number. The DEA and exporter will distribute the amended permit in accordance with § 1312.24. If a request for an amendment is denied by the Administration, the temporary stay will be lifted; once lifted, the originally issued permit may immediately be used to authorize release of a shipment in accordance with the terms of the permit.

(1) An exporter may request that an export permit or application for a permit be amended to change the National Drug Control number, description of the packaging, or trade name of the product, so long as the description is for the same basic class of controlled substance as in the original permit.

(2) An exporter may request that an export permit or application for a permit be amended to change the proposed port of export, the anticipated date of release by a customs officer, or the method of transport.

(3) An exporter may request that an export permit or application for a permit be amended to change the justification provided as to why an export shipment is needed to meet the legitimate scientific or medical needs of the country of import.

(4) An exporter may request that an export permit or application for a permit be amended to change any registrant notes.

(5) Prior to departure of the shipment from the exporter's registered location, an exporter may request that an export permit or application for a permit be amended to increase the total base weight of a controlled substance. However, the total base weight or the strength of the product (if listed) of a controlled substance may not exceed that permitted for import as indicated on the import permit from the foreign competent national authority. Exporters are not required to amend an export permit for the sole purpose of decreasing the total base weight of a controlled substance authorized to be exported. However, the balance of any unexported authorized quantity of controlled substances on an export permit is void upon release of a shipment on the issued permit or upon expiration of the unused permit in accordance with paragraph (b) of this section, whichever is sooner. Exporters must submit a request for an amendment to increase the total base weight of a controlled substance at least three business days in advance of the date of release from the port of export.

(6) An exporter may request that an export permit be amended to remove a controlled substance from the permit. However, an exporter may not amend an export permit to add or replace a controlled substance to the item(s) to be exported. Exporters who desire to export a different controlled substance than that contained on their issued export permit or permit application must submit a request for the permit or permit application to be canceled and request a new permit in accordance with § 1312.22.

(7) An exporter may not amend the exporter's name (as it appears on their DEA certificate of registration), the name of the foreign importer(s), or the foreign permit information as provided in the DEA Form 161, 161R, or 161R–EEA. Exporters who need to make any changes to any of these fields must submit a request for the permit or permit application to be canceled and request a new permit in accordance with § 1312.22.

(b) An export permit will be void and of no effect after the date specified therein, which date must conform to the expiration date specified in the supporting import certificate or other documentary evidence upon which the export permit is founded, but in no event will the date be more than 180 calendar days after the date the permit is issued.

(c) An export permit may be canceled after being issued, at the request of the exporter submitted to the Administration through the DEA Office of Diversion Control secure network application, provided that no shipment has been made thereunder. Nothing in this part will affect the right, hereby reserved by the Administration, to cancel an export permit at any time for proper cause.

■ 56. Revise § 1312.26 to read as follows:

§ 1312.26 Records required of exporter.

In addition to any other records required by this chapter, the exporter must keep a record of any serial numbers that might appear on packages of narcotic drugs in quantities of one ounce or more in such a manner as will identify the foreign consignee, along with an official record of the export permit, in accordance with part 1304 of this chapter.

■ 57. In § 1312.27:

■ a. Revise the section heading and paragraphs (a) and (b); and

■ b. Add paragraphs (d) through (g);

The revisions and additions read as follows:

§ 1312.27 Export/reexport declaration.

(a) Any person registered or authorized to export and seeking to export any non-narcotic controlled substance listed in Schedule III, IV, or V, which is not subject to the requirement of an export permit pursuant to § 1312.23(b) or (c), or any person registered or authorized to export and seeking to export any controlled substance in Schedule V, must file a controlled substances export declaration (DEA Form 236) with the Administration through the DEA Office of Diversion Control secure network application not less than 15 calendar days prior to the anticipated date of release by a customs officer at the port of export, and distribute an official record of the declaration as hereinafter directed in § 1312.28. The declaration must be signed and dated by the exporter and must contain the address of the registered location from which the substances will be shipped for exportation. Upon receipt and review, the Administration will issue a completed declaration a transaction identification number. The export declaration is not deemed filed, and therefore not valid, until the Administration has issued a transaction identification number. The exporter may only proceed with the export transaction once the transaction identification number has been issued.

(b)(1) DEA Form 236 must include the following information:

(i) The name/business name, address/business address, contact information (*e.g.,* telephone number(s), email address(es), etc.), and registration number, if any, of the exporter; and the name/business name, address/business address, contact information (*e.g.,* telephone number(s), email address(es), etc.), and registration number of the export broker, if any;

(ii) A detailed description of each controlled substance to be exported including the drug name, dosage form, National Drug Code (NDC) number, Administration Controlled Substance Code Number as set forth in part 1308 of this chapter, the number and size of the packages or containers, the name and quantity of the controlled substance contained in any finished dosage units, and the quantity of any controlled substance (expressed in anhydrous acid, base, or alkaloid) given in kilograms or parts thereof; and

(iii) The anticipated date of release by a customs officer at the port of export, the port of export, the foreign port and country of entry, the carriers and shippers involved, method of shipment, the name of the vessel if applicable, and the name, address, and registration number, if any, of any forwarding agent utilized; and

(iv) The name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) of the consignee in the country of destination, and any registration or license number if the consignee is required to have such numbers either by the country of destination or under United States law. In addition, documentation must be provided to show that:

(A) The consignee is authorized under the laws and regulations of the country of destination to receive the controlled substances, and that

(B) The substance is being imported for consumption within the importing country to satisfy medical, scientific or other legitimate purposes, and that

(v) The reexport of non-narcotic controlled substances in Schedules III and IV, and controlled substances in Schedule V is not permitted under the authority of 21 U.S.C. 953(e), except as provided below and in paragraph (b)(1)(vi) of this section:

(A) Bulk substances will not be reexported in the same form as exported from the United States, i.e, the material must undergo further manufacturing process. This further manufactured material may only be reexported to a country of ultimate consumption.

(B) Finished dosage units, if reexported, will be in a commercial package, properly sealed and labeled for legitimate medical use in the country of destination.

(C) Any reexportation be made known to DEA at the time the initial DEA Form 236, Controlled Substances Import/Export Declaration is completed, by checking the box marked "other" on the certification. The following information will be furnished in the remarks section:

(*1*) Indicate "for reexport".

(*2*) Indicate if reexport is bulk or finished dosage units.

(*3*) Indicate product name, dosage strength, commercial package size, and quantity.

(*4*) Indicate name of consignee, complete address, and expected shipment date, as well as, the name and address of the ultimate consignee in the country to where the substances will be reexported.

(*5*) A statement that the consignee in the country of ultimate destination is authorized under the laws and regulations of the country of ultimate destination to receive the controlled substances.

(D) Shipments that have been exported from the United States and are refused by the consignee in either the first or second country, or subsequent member of the European Economic Area, or are otherwise unacceptable or undeliverable, may be returned to the registered exporter in the United States upon authorization of the Administration. In this circumstance, the exporter in the United States must file a written request for reexport, along with a completed DEA Form 236, with the Administration through the DEA Office of Diversion Control secure network application. A brief summary of the facts that warrant the return of the substance to the United States along with an authorization from the country of export must be included with the request. DEA will evaluate the request after considering all the facts as well as the exporter's registration status with DEA. The substance may be returned to the United States only after affirmative authorization is issued in writing by DEA.

(vi) The reexport of non-narcotic controlled substances in Schedules III and IV, and controlled substances in Schedule V is permitted among members of the European Economic Area only as provided below:

(A) The controlled substance will not be exported from the second country or a subsequent country, except that the controlled substance may be exported from a second country or a subsequent country that is a member of the European Economic Area to another country that is a member of the European Economic Area, provided that the first country is also a member of the European Economic Area; each country is a party to the Convention on Psychotropic Substances, 1971, as amended; and each country has instituted and maintains, in conformity with such Convention, a system of controls of imports of controlled substances which the Attorney General deems adequate.

(B) Each shipment of finished dosage units, if reexported, must be in a commercial package, properly sealed and labeled for legitimate medical use in the country of destination.

(C) Any reexportation must be made known to DEA at the time the initial DEA Form 236, Controlled Substances Import/Export Declaration is completed, by checking the box marked "other" on the certification. In addition to the requirements of paragraph (b) of this section, the following information will be furnished in the remarks section:

(*1*) Indicate "for reexport among members of the European Economic Area".

(*2*) Indicate if reexport is bulk or finished dosage units.

(*3*) Indicate product name, dosage strength, commercial package size, and quantity.

(*4*) Indicate the name/business name, address/business address, contact information (*e.g.*, telephone number(s), email address(es) and business of the consignee in the first country.

(*5*) A statement that the consignee in the second country, and any subsequent consignee within the European Economic Area, is authorized under the laws and regulations of the second and/or subsequent country to receive the controlled substances.

(2) With respect to reexports among members of the European Economic Area, the requirements of paragraph (b)(1) of this section shall apply only with respect to the export from the United States to the first country and not to any subsequent export from that country to another country of the European Economic Area.

* * * * *

(d) *Return information*—(i) *Return information for exports.* Within 30 calendar days after the controlled substance is released by a customs officer at the port of export, or within 10 calendar days after receipt of a written request by the Administration to the exporter, whichever is sooner, the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the transaction. This report must include the following information: The date on which the controlled substance left the registered location; the date on which the controlled substance was released by a customs officer; the actual quantity of the controlled substance that left the registered location; and the actual quantity of the controlled substance released by a customs officer at the port of export; the actual port of export. Upon receipt and review, the Administration will assign a completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number.

(ii) *Return information for reexports outside of the European Economic Area*—(A) *Return information for export from the United States, for reexport.* Within 30 calendar days after the controlled substance is released by a customs officer at the port of export the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the transaction. This report must include the following information: The date on which the controlled substance left the registered location; the date on which the controlled substance was released by a customs officer at the port of export; the actual quantity of controlled substance released by a customs officer at the port of export; and the actual port of export. Upon receipt and review, the Administration will assign a completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number.

(B) *Return information for export from a first country that is or is not a member of the European Economic Area to a country outside of the European Economic Area; return information for export from a first country that is not a member of the European Economic Area to a member of the European Economic Area.* Within 30 calendar days after the controlled substance is exported from the first country to the second country the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the export from the first country. If the permit issued by the Administration authorized the reexport of a controlled substance from the first country to more than one second country, a report for each individual reexport is required. These reports must include the following information: Name of second country; actual quantity of controlled substance shipped; the date shipped from the first country; and the actual port from which the controlled substances were shipped from the first country. Upon receipt and review, the Administration will assign each completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number.

(iii) *Reexports among members of the European Economic Area*—(A) *Return information for exports from the United States, for reexport among members of the European Economic Area.* Exporters must comply with the return reporting requirements of paragraph (d)(ii)(A) of this section.

(B) *Reexports among members of the European Economic Area.* Within 30 calendar days after the controlled substance is exported from the first country to the second country, and within 30 calendar days of each subsequent reexport within the European Economic Area, if any, the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the export. These reports must include the name of country to which the controlled substance was reexported to another member of the European Economic Area; the actual quantity of controlled substance shipped; the date shipped from the first country, the name/business name, address/business address, contact information (*e.g.,* telephone number(s), email address(es), etc.) and business of the consignee; and the name/business name, address/business address, contact information (*e.g.,* telephone number(s), email address(es), etc.) and business of the exporter. Upon receipt and review, the Administration will assign each completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number.

(e) An exporter may amend an export declaration in the same circumstances in which an exporter may request amendment to an export permit, as set forth in § 1312.25(a)(1) through (7). Amendments to declarations must be submitted through the DEA Office of Diversion Control secure network application. Except as provided in § 1312.25(a)(5) exporters must submit all amendments at least one full business day in advance of the date of release by a customs officer. Exporters must specifically note that an amendment is being made; supplementary information submitted by an exporter through the DEA Office of Diversion Control secure network application will not automatically be considered an amendment. Upon receipt and review, the Administration will assign each completed amendment a transaction identification number. The amendment will not be deemed filed until the Administration issues a transaction identification number. The DEA and the exporter will distribute the amended declaration in accordance with § 1312.28. A filed amendment will not change the date that the declaration becomes void and of no effect in accordance with § 1312.27(f).

(f) An export declaration may be canceled after being filed with the Administration, at the request of the exporter, provided no shipment has been made thereunder. Export declarations shall become void and of no effect 180 calendar days after the date the declaration is deemed filed with the Administration.

(g) *Denied release at the port of export.* In the event that a shipment of controlled substances has been denied release by a customs officer at the port of export for any reason, the exporter who attempted to have the shipment released must, within 24-hours of the denial, report to the Administration that the shipment was denied release and the reason for denial. Such report must be transmitted to the Administration through the DEA Office of Diversion Control secure network application. This report must include the following information: The quantity of the controlled substance denied release; the date on which release was denied; and the basis for the denied release. Upon the exporter's report of a denied release, DEA will assign the report a transaction identification number and the export declaration will be void and of no effect. No shipment of controlled substances denied release for any reason will be allowed to be released unless the exporter files a new declaration and the Administration issues a new transaction identification number.

■ 58. Revise § 1312.28 to read as follows:

§ 1312.28 Distribution of export declaration.

(a) The exporter must ensure that an official record of the export declaration (available from the DEA Office of Diversion Control secure network application after the Administration issues a transaction identification number) accompanies the shipment of controlled substances to its destination.

(b) The exporter, or their agent, must submit an official record of the export declaration and/or required data concerning the export transaction to a customs officer at the port of export in compliance with all export control requirements of agencies with export control authorities under the Act or statutory authority other than the Controlled Substances Import and Export Act.

(c) The exporter must maintain an official record of the export declaration and return information (both available from the Office of Diversion Control secure network application after the Administration issues a transaction identification number) required pursuant to § 1312.27(d) as his or her record of authority for the exportation, in accordance with part 1304 of this chapter.

■ 59. In § 1312.31, revise introductory text of paragraph (b) and add paragraph (d)(4) to read as follows:

§ 1312.31 Schedule I: Application for prior written approval.

* * * * *

(b) An application for a transshipment permit must be submitted to the Regulatory Section, Office of Diversion Control, Drug Enforcement Administration, at least 30 calendar days, or in the case of an emergency as soon as is practicable, prior to the expected date of arrival at the first port in the United States. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. A separate permit is required for each shipment of controlled substance to be imported, transferred, or transshipped. Each application must contain the following:

* * * * *

(d) * * *

(4) If the import license or permit, or the certified copy of such, is not written in English or bilingual with another language and English, the application must include a certified translation of the permit or license. For purposes of this requirement, certified translation means that the translator has signed the translation legally attesting the accuracy of the translation and the attestation has been notarized.

* * * * *

■ 60. Revise § 1312.32 to read as follows:

§ 1312.32 Schedules II, III, IV: Advance notice.

(a) A controlled substance listed in Schedules II, III, or IV may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that written notice is submitted to the Regulatory Section, Office of Diversion Control, Drug Enforcement Administration, at least 15 calendar days prior to the expected date of date of arrival at the first port in the United States. See the Table of DEA mailing Addresses in § 1321.01 of this chapter for the current mailing addresses.

(b) A separate advance notice is required for each shipment of controlled substance to be imported, transferred, or transshipped. Each advance notice must contain those items required by § 1312.31(b) and (c). If the export license, permit, or other authorization, issued by a competent national authority of the country of origin, is not written in English or bilingual with another language and English, the notice must be accompanied by a certified translation of the export license, permit, or other authorization. For purposes of this requirement, certified translation means that the translator has signed the translation legally attesting the accuracy of the translation and the attestation has been notarized.

PART 1313—IMPORTATION AND EXPORTATION OF LIST I AND LIST II CHEMICALS

■ 61. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

■ 62. Add § 1313.03 to read as follows:

§ 1313.03 Forms applicable to this part.

Form	Access/ submission
DEA Form 486, Import/Export Declaration for List I and List II Chemicals.	electronic.
DEA Form 486A Import Declaration for ephedrine, pseudoephedrine, and phenylpropanolamine (including drug products containing these chemicals).	electronic.

■ 63. In § 1313.12, revise the section heading, paragraphs (a), (b), (c) introductory text (d), and (e) introductory text to read as follows:

§ 1313.12 Notification prior to import.

(a) Each regulated person who seeks to import a listed chemical that meets or exceeds the threshold quantities identified in § 1310.04(f) of this chapter or is a listed chemical for which no threshold has been established as identified in § 1310.04(g) of this chapter, must notify the Administration of the intended import by filing an import declaration (on DEA Form 486/486A) not later than 15 calendar days before the date of release by a customs officer at the port of entry. Regulated persons who seek to import a listed chemical below the threshold quantities identified in § 1310.04(f) of this chapter are not required to file an import declaration in advance of the release by a customs officer.

(b) A complete and accurate declaration (DEA Form 486/486A) must be filed with the Administration through the DEA Office of Diversion Control secure network application not later than 15 calendar days prior to the date of release by a customs officer at the port of entry. The declaration must be signed and dated by the importer and must contain the address of the final destination for the shipment, which for List I chemicals must be a registered location of the importer. Upon receipt and review, the Administration will assign a transaction identification number to each completed declaration. The 15 calendar days shall begin on the date that the regulated person submits a completed declaration, without regard to the date that the Administration assigns a transaction identification number. Listed chemicals meeting or exceeding the threshold quantities identified in § 1310.04(f) of this chapter or for which no threshold has been established may not be imported until a transaction identification number has been issued.

(c) The 15-calendar-day advance notification requirement for listed chemical imports may be waived, in whole or in part, for the following:

* * * * *

(d) For imports meeting the requirements of paragraph (c)(1) of this section, the declaration (DEA Form 486/486A) must be filed with the Administration through the DEA Office of Diversion Control secure network application at least three business days before the date of release by a customs officer at the port of entry. The declaration must be signed and dated by the importer and must contain the address of the final destination for the shipment, which must be a registered location of the importer (for List I chemicals). Upon receipt and review, the Administration will assign a transaction identification number to each completed declaration. The importer may proceed with the import transaction only once the transaction identification number has been issued.

(e) For importations where advance notification is waived pursuant to paragraph (c)(2) of this section no DEA Form 486 is required; however, the regulated person must submit quarterly reports to the Regulatory Section, Office of Diversion Control, Drug Enforcement Administration, not later than the 15th day of the month following the end of each quarter. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. The report shall contain the following information regarding each individual importation:

* * * * *

■ 64. Revise § 1313.13 to read as follows:

§ 1313.13 Requirements of import declaration.

(a) Any List I or List II chemical listed in § 1310.02 of this chapter may be imported if that chemical is necessary for medical, commercial, scientific, or other legitimate uses within the United

States. Chemical importations into the United States for immediate transfer/transshipment outside the United States must comply with the procedures set forth in § 1313.31 and all other applicable laws.

(b) The DEA Form 486/486A must include the following information:

(1) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the chemical importer; the name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the broker or forwarding agent (if any); and

(2) The name and description of each listed chemical as it appears on the label or container, the name of each chemical as it is designated in § 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof, and the gross weight of the shipment given in kilograms or parts thereof; and

(3) The date of release by a customs officer at the port of entry, the foreign port and country of export, and the port of entry; and

(4) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the consignor in the foreign country of exportation; and

(5) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the person or persons to whom the importer intends to transfer the listed chemical and the quantity to be transferred to each transferee.

(c) Any regulated person importing ephedrine, pseudoephedrine, or phenylpropanolamine must submit, on the import declaration (DEA Form 486A), all information known to the importer on the chain of distribution of the chemical from the manufacturer to the importer. Ephedrine, pseudoephedrine, or phenylpropanolamine include each of the salts, optical isomers, and salts of optical isomers of the chemical.

(d) Import declarations shall become void and of no effect 180 calendar days after the date the declaration is deemed filed with the Administration.

■ 65. Revise § 1313.14 to read as follows:

§ 1313.14 Disposition of import declaration.

The importer, or their agent, must submit an official record of the import declaration and/or required data concerning the import transaction to a customs officer at the port of entry in compliance with all import control requirements of agencies with import control authorities under the Act or statutory authority other than the Controlled Substances Import and Export Act. The final destination of the import transaction must only be the registered location of the importer (*i.e.,* drop shipments are prohibited). A regulated person must maintain an official record of the declaration (available from the DEA Office of Diversion Control secure network application after the Administration issues a transaction identification number) in accordance with part 1310 of this chapter as the record of the import. Official records of import declarations involving listed chemicals must be retained for two years.

■ 66. In § 1313.15, revise the section heading and paragraph (b) to read as follows:

§ 1313.15 Qualification of regular importers.

* * * * *

(b) Each regulated person making application under paragraph (a) of this section shall be considered a "regular importer" 30 calendar days after receipt of the application by the Administration, as indicated on the return receipt, unless the regulated person is otherwise notified in writing by the Administration.

* * * * *

■ 67. In § 1313.16, revise the section heading and paragraph (b) to read as follows:

§ 1313.16 Updated notice for change in circumstances.

* * * * *

(b) After a notice under § 1313.12(a) or (d) is submitted to the Administration, if circumstances change and the importer will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the importer must update the notice to identify the most recent prospective transferee or the most recent quantity or both (as the case may be) and may not transfer the listed chemical until after the expiration of the 15-calendar-day period beginning on the date on which the update is filed with the Administration, or, if the import is being made by a regular importer or intended for transfer to a regular customer, 3 business days. The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an update to the same extent and in the same manner as the sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under § 1313.12(a) or (d). Amended declarations must be submitted to the Administration through the DEA Office of Diversion Control secure network application. The amendment must be signed and dated by the importer. Upon receipt and review, the Administration will assign each completed amendment a transaction identification number. Such shipment of listed chemicals may not be imported into the United States until the transaction identification number has been issued.

* * * * *

■ 68. Revise § 1313.17 to read as follows:

§ 1313.17 Return declaration for imports.

(a) *Return information.* Within 30 calendar days after actual receipt of a listed chemical at the importer's registered location or place of business if not required to be registered, the importer must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the transaction. This report must include the following information: The date on which the the listed chemical was released by a customs officer at the port of entry; the date on which the listed chemical arrived at the importer's registered location or place of business; the actual quantity of the listed chemical released; the actual quantity of the listed chemical that arrived at the importer's location; the date of any subsequent transfer; a description of the subsequent transfer, including the actual quantity transferred, chemical, container, and name of transferees; the actual port of entry; and any other information as the Administration may specify. A single report may include the particulars of both the importation and distribution. If the importer has not distributed all chemicals imported by the end of the initial 30-calendar-day period, the importer must file supplemental reports not later than 30 calendar days from the date of any further distribution, until the distribution or other disposition of all chemicals imported under the import declaration or any amendment or other update is accounted for. Upon receipt and review, the Administration will assign each completed report a transaction identification number. In determining whether the importer has complied with the requirement to file within 30 calendar days, the report shall be deemed filed on the first date on which a complete report is filed.

(b) If an importation for which a DEA Form 486/486A has been filed fails to take place, the importer must report to the Administration that the importation did not occur through the DEA Office of Diversion Control secure network application.

(c) *Denied release at the port of entry.* In the event that a shipment of listed chemicals has been denied release by a customs officer at the port of entry for any reason, the importer who attempted to have the shipment released, within 24-hours of the denial, report to the Administration that the shipment was denied release and the reason for denial. Such report must be transmitted to the Administration through the DEA Office of Diversion Control secure network application. This report must include the following information: the quantity of the listed chemical denied release; the date on which release was denied; and the basis for the denied release. Upon the importer's report of a denied release, the DEA will assign the report a transaction identification number and the import declaration will be void and of no effect. No shipment of listed chemicals denied release for any reason will be allowed entry into the United States without a subsequent refiling of an import declaration. Following such refiling the importer may request release of the listed chemicals immediately after receipt of a transaction identification number without regard to the 15 day advance filing requirement in § 1313.12(b).

■ 69. In § 1313.21, revise the section heading, paragraphs (a), (b), (c) introductory text, (d), and (e) introductory text, and add paragraph (h) to read as follows:

§ 1313.21 Notification prior to export.

(a) Each regulated person who seeks to export a listed chemical that meets or exceeds the threshold quantities identified in § 1310.04(f) of this chapter, or is a listed chemical for which no threshold has been established as identified in § 1310.04(g) of this chapter, must notify the Administration of the intended export by filing an export declaration (DEA Form 486) not later than 15 calendar days before the date of release by a customs officer at the port of export. Regulated persons who seek to export a listed chemical below the threshold quantities identified in § 1310.04(f) of this chapter are not required to file an export declaration in advance of the export.

(b) A complete and accurate declaration (DEA Form 486) must be filed with the Administration through the DEA Office of Diversion Control secure network application not later than 15 calendar days prior to the date of release by a customs officer at the port of export. The declaration must be signed and dated by the exporter and must contain the address from which the listed chemicals will be shipped for exportation. Upon receipt and review, the Administration will assign a transaction identification number to each completed declaration. The 15 calendar days shall begin on the date that the regulated person files a completed declaration without regard to the date that the Administration assigns a transaction identification number. Exporters may not request release of a listed chemical until a transaction identification number has been issued.

(c) The 15-calendar-day advance notification requirement for listed chemical exports may be waived, in whole or in part, for:

* * * * *

(d) For exports meeting the requirements of paragraph (c)(1) of this section, the declaration (DEA Form 486) must be filed with the Administration through the DEA Office of Diversion Control secure network application at least three business days before the date of release by a customs officer. The declaration must be signed and dated by the exporter and must contain the address from which the listed chemicals will be shipped for exportation. Upon receipt and review, the Administration will assign a transaction identification number to each completed declaration. The exporter may only proceed with the export transaction once the transaction identification number has been issued.

(e) For exportations where advance notification is waived pursuant to paragraph (c)(2) of this section no DEA Form 486 is required; however, the regulated person must submit quarterly reports with the Regulatory Section, Office of Diversion Control, Drug Enforcement Administration, not later than the 15th day of the month following the end of each quarter. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. Such report shall contain the following information regarding each individual exportation:

* * * * *

(h) Export declarations shall become void and of no effect 180 calendar days after the date the declaration is deemed filed with the Administration.

■ 70. Revise § 1313.22 to read as follows:

§ 1313.22 Export declaration.

(a) Any List I or List II chemical listed in § 1310.02 of this chapter which meets or exceeds the quantitative threshold criteria established in § 1310.04(f) of this chapter or is a listed chemical for which no threshold has been established as identified in § 1310.04(g) of this chapter, may be exported if that chemical is needed for medical, commercial, scientific, or other legitimate uses.

(b) The export declaration (DEA Form 486) must include all the following information:

(1) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the chemical exporter; the name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the export broker, if any;

(2) The name and description of each listed chemical as it appears on the label or container, the name of each listed chemical as it is designated in § 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof, and the gross weight of the shipment given in kilograms or parts thereof;

(3) The anticipated date of release by a customs officer at the port of export, the port of export, and the foreign port and country of entry; and

(4) The name/business name, address/business address, and contact information (*e.g.,* telephone number(s), email address(es), etc.) of the consignee in the country where the chemical shipment is destined; the name(s) and address(es) of any intermediate consignee(s); and a copy of the foreign permit, license or registration issued by the competent national authority of the consignee and any intermediate consignees.

(c) Declared exports of listed chemicals which are refused, rejected, or otherwise deemed undeliverable by the foreign competent national authority may be returned to the U.S. chemical exporter of record. The regulated person must provide notification through the DEA Office of Diversion Control secure network application (this does not require a DEA Form 486) outlining the circumstances within a reasonable time following the return. Upon receipt and review, the Administration will assign the completed notice a transaction identification number. The notice will not be deemed filed until the Administration issues a transaction identification number. Listed chemicals so returned may not be reexported until the exporter has filed a new DEA Form 486 and the Administration has issued a new transaction identification number. This provision does not apply to shipments that have cleared foreign customs, been delivered, and accepted by the foreign consignee. Returns to third parties in the United States will be regarded as imports.

■ 71. Revise § 1313.23 to read as follows:

§ 1313.23 Disposition of export declaration.

The exporter, or their agent, must submit an official record of the export declaration and/or required data concerning the export transaction to a customs officer at the port of export in compliance with all export control requirements of agencies with export control authorities under the Act or statutory authority other than the Controlled Substances Import and Export Act. An official record of the declaration (available from the DEA Office of Diversion Control secure network application after the Administration issues a transaction identification number) must be maintained by the chemical exporter as the official record of the export in accordance with part 1310 of this chapter. Export declarations involving a listed chemical must be retained for two years.

■ 72. In § 1313.26, revise the section heading and paragraph (b) to read as follows:

§ 1313.26 Updated notice for change in circumstances.

* * * * *

(b) After a notice under § 1313.21(a) is submitted to the Administration, if circumstances change and the exporter will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the exporter must update the notice to identify the most recent prospective transferee or the most recent quantity or both (as the case may be). The exporter may not transfer the listed chemical until after the expiration of the 15-calendar-day period beginning on the date on which the update is filed with the Administration. Except, if the listed chemical is intended for transfer to a regular customer, the exporter may not transfer the listed chemical until after the expiration ofthree business days. The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an update to the same extent and in the same manner as the sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under paragraph (a) of this section. Amended declarations must be submitted to the Administration through the DEA Office of Diversion Control secure network application. The amendment must be signed and dated by the exporter. Upon receipt and review, the Administration will assign each completed amendment a transaction identification number. The amendment will not be deemed filed until the Administration issues a transaction identification number.

* * * * *

■ 73. Revise § 1313.27 to read as follows:

§ 1313.27 Return declaration for exports.

(a) *Return information.* Within 30 calendar days after a listed chemical is released by a customs officer at the port of export, the exporter must file a report with the Administration through the DEA Office of Diversion Control secure network application specifying the particulars of the transaction. This report must include the following information: the date on which the listed chemical left the registered location or place of business; the date on which the listed chemical was released by a customs officer at the port of export; the actual quantity of listed chemical that left the registered location or place of business; the actual quantity of the listed chemical released by a customs officer at the port of export; chemical; container; name of transferees; and any other information as the Administration may specify. Upon receipt and review, the Administration will assign a completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number. In determining whether the exporter has complied with the requirement to file within 30 calendar days, the report shall be deemed filed on the first date on which a complete report is filed.

(b) If an exportation for which a DEA Form 486 has been filed fails to take place, the exporter must report to the Administration that the exportation did not occur through the DEA Office of Diversion Control secure network application.

(c) *Denied release at the port of export.* In the event that a shipment of listed chemicals has been denied release by a customs officer at the port of export for any reason, the exporter who attempted to have the shipment released must, within 24-hours of the denial, report to the Administration that the shipment was denied release and the reason for denial. Such report must be transmitted to the Administration through the DEA Office of Diversion Control secure network application. This report must include the following information: the quantity of the listed chemicals denied release; the date on which release was denied; and the basis for the denied release. Upon the exporter's report of a denied release, DEA will assign the report a transaction identification number and the export declaration will be void and of no effect. No shipment of listed chemicals denied release for any reason will be allowed to be released from the United States without a subsequent refiling of a complete and accurate export declaration. Following such refiling, the exporter may request the release of the listed chemicals immediately after receipt of a transaction identification number without regard to the 15 day advance filing required by paragraph § 1313.21(b).

■ 74. In § 1313.31, revise paragraph (b) introductory text and paragraphs (b)(7), (b)(8), (b)(14), and (b)(15) to read as follows:

§ 1313.31 Advance notice of importation for transshipment or transfer.

* * * * *

(b) Advance notification must be provided to the Regulatory Section, Office of Diversion Control, Drug Enforcement Administration, not later than 15 calendar days prior to the proposed date the listed chemical will transship or transfer through the United States. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. A separate notification is required for each shipment of listed chemicals to be transferred or transshipped. The written notification (not a DEA Form 486) must contain the following information:

* * * * *

(7) The name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) and type of business of the foreign exporter;

(8) The foreign port and country of export;

* * * * *

(14) The name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) and type of business of the consignee at the foreign port or country of entry;

(15) The shipping route from the U.S. port of export to the foreign port or country of entry at final destination;

* * * * *

■ 75. Revise § 1313.32 to read as follows:

§ 1313.32 Notification of international transactions.

(a) A broker or trader must notify the Administration prior to an international transaction involving a listed chemical which meets or exceeds the threshold quantities identified in § 1310.04(f) of this chapter or is a listed chemical for which no threshold has been established as identified in § 1310.04(g) of this chapter, in which the broker or trader participates. Notification must be made not later than 15 calendar days before the transaction is to take place. In order to facilitate an international transaction involving listed chemicals and implement the purpose of the Act, regulated persons may wish to provide advance notification to the Administration as far in advance of the 15 calendar days as possible.

(b) A completed DEA Form 486 must be submitted to the Administration through the DEA Office of Diversion Control secure network application, not later than 15 calendar days prior to the international transaction. The DEA Form 486 must be signed and dated by the broker or trader. Upon receipt and review, the Administration will assign a transaction identification number to each completed notification. A notification is not deemed filed, and therefore is not valid, until the Administration assigns the notification a transaction identification number. An international transaction may not take place until after a transaction identification number has been assigned and the expiration of the 15-calendar-day period beginning on the date on which the broker or trader submits a complete notification to the Administration.

(c) No person shall serve as a broker or trader for an international transaction involving a listed chemical knowing or having reasonable cause to believe that the transaction is in violation of the laws of the country to which the chemical is exported or the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported. The Administration will publish a notice of foreign import restrictions for listed chemicals of which DEA has knowledge as provided in § 1313.25.

(d) After a notice under paragraph (a) of this section is submitted to the Administration, if circumstances change and the broker or trader will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the broker or trader must amend the notice through the DEA Office of Diversion Control secure network application to identify the most recent prospective transferee or the most recent quantity or both (as applicable) and may not transfer the listed chemical until after the expiration of the 15-calendar-day period beginning on the date on which the update is submitted to the Administration. The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an amendment to the same extent and in the same manner as the sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under paragraph (a) of this section.

(e) For purposes of this section:

(1) The term transfer, with respect to a listed chemical, includes the sale of the chemical.

(2) The term transferee means a person to whom an exporter transfers a listed chemical.

■ 76. Revise § 1313.33(b) and (c) to read as follows:

§ 1313.33 Contents of an international transaction declaration.

* * * * *

(b) Any broker or trader who desires to arrange an international transaction, defined in 21 U.S.C. 802(42), involving a listed chemical which meets the threshold criteria set forth in § 1310.04 of this chapter must notify the Administration through the procedures outlined in § 1313.32(b).

(c) The DEA Form 486 must include:

(1) The name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) of the chemical exporter; the name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) of the chemical importer;

(2) The name and description of each listed chemical as it appears on the label or container, the name of each listed chemical as it is designated in § 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof, and the gross weight of the shipment given in kilograms or parts thereof;

(3) The anticipated date of release at the foreign port of export, the anticipated foreign port and country of export, and the foreign port and country of entry; and

(4) The name/business name, address/business address, and contact information (*e.g.*, telephone number(s), email address(es), etc.) of the consignee in the country where the chemical shipment is destined; the name(s) and address(es) of any intermediate consignee(s).

■ 77. Revise § 1313.34 to read as follows:

§ 1313.34 Disposition of the international transaction declaration.

The broker or trader must retain an official record of the declaration (DEA Form 486) (available from the DEA Office of Diversion Control secure network application after the Administration issues a transaction identification number) as the official record of the international transaction. In accordance with part 1310 of this chapter, declarations involving listed chemicals must be retained for two years.

■ 78. Revise § 1313.35 to read as follows:

§ 1313.35 Return declaration or amendment to Form 486 for international transactions.

(a) Within 30 calendar days after an international transaction is completed, the broker or trader must file a report with the Administration through the DEA Office of Diversion Control secure network application about the particulars of the transaction. This report must include the following information: the date(s) on which the listed chemical was released by the foreign customs officer(s) at the port(s); the actual quantity of listed chemical that left the country of export; the actual quantity of the listed chemical released by a customs officer at the port of entry; chemical; container; name of transferees; and the transaction identification and any other information as the Administration may specify. Upon receipt and review, the Administration will assign a completed report a transaction identification number. The report will not be deemed filed until the Administration has issued a transaction identification number.

(b) If an international transaction for which a DEA Form 486 has been filed fails to take place, the broker or trader must report to the Administration that the international transaction did not occur utilizing the DEA Office of Diversion Control secure network application as soon as the broker or trader becomes aware of the circumstances.

PART 1314—RETAIL SALE OF SCHEDULED LISTED CHEMICAL PRODUCTS

■ 79. The authority citation for part 1314 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 842, 871(b), 875, 877, 886a.

§ 1314.110 [Amended]

■ 80. In § 1314.110, in paragraphs (a)(1) and (2), remove the phrase "Import/Export Unit," and add in its place "Regulatory Section, Office of Diversion Control,".

PART 1315—IMPORTATION AND PRODUCTION QUOTAS FOR EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE

■ 81. The authority citation for part 1315 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 826, 871(b), 952.

§ 1315.22 [Amended]

■ 82. In § 1315.22, remove "Drug & Chemical Evaluation Section, Drug Enforcement Administration" from the second sentence of the introductory text and add in its place "UN Reporting & Quota Section, Office of Diversion Control, Drug Enforcement Administration".

§ 1315.27 [Amended]

■ 83. In § 1315.27, remove "Drug & Chemical Evaluation Section" and add in its place "UN Reporting & Quota Section, Office of Diversion Control, Drug Enforcement Administration".

§ 1315.32 [Amended]

■ 84. In § 1315.32(e) and (g), remove "Drug & Chemical Evaluation Section, Drug Enforcement Administration" wherever it appears and add in its place "UN Reporting & Quota Section, Office of Diversion Control, Drug Enforcement Administration".

§ 1315.34 [Amended]

■ 85. In § 1315.34(d), remove "Drug & Chemical Evaluation Section" from the second sentence and add in its place "UN Reporting & Quota Section, Office of Diversion Control, Drug Enforcement Administration".

§ 1315.36 [Amended]

■ 86. In § 1315.36(b), remove "Drug & Chemical Evaluation Section, Drug Enforcement Administration" from the second sentence and add in its place "UN Reporting & Quota Section, Office of Diversion Control, Drug Enforcement Administration".

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

■ 87. The authority citation for part 1316, subpart D continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 875, 958(d), 965.

■ 88. Revise § 1316.47(a) to read as follows:

§ 1316.47 Request for hearing.

(a) Any person entitled to a hearing and desiring a hearing shall, within the period permitted for filing, file a request for a hearing and/or an answer that complies with the following format (see the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address):

(Date) ______
Drug Enforcement Administration, Attn: Hearing Clerk/OALJ
(Mailing Address) ______
Subject: Request for Hearing
Dear Hearing Clerk:

The undersigned ______ (Name of the Person) hereby requests a hearing in the matter of: ______ (Identification of the proceeding).

(A) (State with particularity the interest of the person in the proceeding.)

(B) (State with particularity the objections or issues, if any, concerning which the person desires to be heard.)

(C) (State briefly the position of the person with regard to the particular objections or issues.)

All notices to be sent pursuant to the proceeding should be addressed to:

(Name) ______
(Street Address) ______
(City and State) ______
Respectfully yours,
(Signature of Person) ______

* * * * *

■ 89. Revise § 1316.48 to read as follows:

§ 1316.48 Notice of appearance.

Any person entitled to a hearing and desiring to appear in any hearing, shall, if he or she has not filed a request for hearing, file within the time specified in the notice of proposed rulemaking, a written notice of appearance in the following format (see the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address):

(Date) ______
Drug Enforcement Administration, Attn: Hearing Clerk/OALJ
(Mailing Address) ______
Subject: Notice of Appearance
Dear Hearing Clerk:

Please take notice that ______ (Name of person) will appear in the matter of: ______ (Identification of the proceeding).

(A) (State with particularity the interest of the person in the proceeding.).

(B) (State with particularity the objections or issues, if any, concerning which the person desires to be heard.).

(C) (State briefly the position of the person with regard to the particular objections or issues.).

All notices to be sent pursuant to this appearance should be addressed to:

(Name) ______
(Street Address) ______
(City and State) ______
Respectfully yours,
(Signature of Person) ______

PART 1321—DEA MAILING ADDRESSES

■ 90. The authority citation for part 1321 continues to read:

Authority: 21 U.S.C. 871(b).

■ 91. Revise § 1321.01 to read as follows:

§ 1321.01 DEA mailing addresses.

The following table provides information regarding mailing addresses to be used when sending specified correspondence to the Drug Enforcement Administration.

TABLE OF DEA MAILING ADDRESSES

Code of Federal Regulations Section—Topic	DEA mailing address
DEA Administrator	
1308.43(b)—Petition to initiate proceedings for rulemaking. 1316.23(b)—Petition for grant of confidentiality for research subjects .... 1316.24(b)—Petition for exemption from prosecution for researchers. ...	Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, VA 22152.

TABLE OF DEA MAILING ADDRESSES—Continued

Code of Federal Regulations Section—Topic	DEA mailing address
DEA Office of Diversion Control	
1307.03—Exception request filing. 1307.22—Delivery of surrendered and forfeited controlled substances. 1310.21(b)—Sale by Federal departments or agencies of chemicals which could be used to manufacture controlled substances certification request.**	Drug Enforcement Administration, Attn: Office of Diversion Control/OD, 8701 Morrissette Drive, Springfield, VA 22152.
DEA Regulatory Section	
1301.71(d)—Security system compliance review for controlled substances. 1309.71(c)—Security system compliance review for List I chemicals ..... 1310.03(c)—Mail-Order reports involving transactions with nonregulated persons or exports.* 1310.05(b)(1)—Unusual or excessive loss or disappearance of listed chemicals 1310.05(b)(2)—Reports of domestic regulated transactions in a tableting machine or an encapsulating machine.* 1310.05(c)(1)—Reports of imports and exports of a tableting machine or an encapsulating machine.* 1310.05(c)(2)—Report of declared exports of machines refused, rejected, or returned. 1312.12(a)—Application for import permit (DEA Form 357).* 1312.18(b)—Import declaration (DEA Form 236) submission.* 1312.22(g)(8)—Request for return of unacceptable or undeliverable exported controlled substances.* 1312.27(a)—Controlled substances export declaration (DEA Form 236) filing.* 1312.31(b)—Controlled substances transshipment permit application. 1312.32(a)—Advanced notice of importation for transshipment or transfer of controlled substances. 1313.12(b)—Authorization to import listed chemicals (DEA Form 486/486A).* 1313.12(e)—Quarterly reports of listed chemicals importation. 1313.21(b)—Authorization to export listed chemicals (DEA Form 486).* 1313.21(e)—Quarterly reports of listed chemicals exportation. 1313.22(c)—Notice of declared exports of listed chemicals refused, rejected or undeliverable.* 1313.31(b)—Advanced notice of importation for transshipment or transfer of listed chemicals. 1313.32(b)(1)—International transaction authorization (DEA Form 486).* 1314.110(a)(1)—Reports for mail-order sales. 1314.110(a)(2)—Request to submit mail-order sales reports.	Drug Enforcement Administration, Attn: Regulatory Section/ODG, 8701 Morrissette Drive, Springfield, VA 22152.
DEA Drug & Chemical Evaluation Section	
1308.21(a)—Exclusion of nonnarcotic substance. 1308.23(b)—Exemption for chemical preparations. 1308.24(d)—Exempt narcotic chemical preparations importer/exporter reporting. 1308.24(i)—Exempted chemical preparations listing. 1308.25(a)—Exclusion of veterinary anabolic steroid implant product application. 1308.26(a)—Excluded veterinary anabolic steroid implant products listing. 1308.31(a)—Exemption of a nonnarcotic prescription product application. 1308.32—Exempted prescription products listing. 1308.33(b)—Exemption of certain anabolic steroid products application. 1308.34—Exempted anabolic steroid products listing. 1310.13(b)—Exemption for chemical preparations. 1310.05(d)—Bulk manufacturer of listed chemicals reporting.	Drug Enforcement Administration, Attn: Drug & Chemical Evaluation Section/ODE, 8701 Morrissette Drive, Springfield, VA 22152.
UN Reporting & Quota Section	
1303.12(b)—Application for controlled substances procurement quota (DEA Form 250) filing and request. 1303.12(d)—Controlled substances quota adjustment request.	Drug Enforcement Administration, Attn: UN Reporting & Quota Section/ODQ, 8701 Morrissette Drive, Springfield, VA 22152.

TABLE OF DEA MAILING ADDRESSES—Continued

Code of Federal Regulations Section—Topic	DEA mailing address
1303.22—Application for individual manufacturing quota (DEA Form 189) filing and request for schedule I or II controlled substances.	
1304.31(a)—Manufacturers importing narcotic raw material report submission.	
1304.32(a)—Manufacturers importing coca leaves report submission.	
315.22—Application for individual manufacturing quota for ephedrine, pseudoephedrine, phenylpropanolamine (DEA Form 189) filing and request.	
1315.32(e)—Application for procurement quota for ephedrine, pseudoephedrine, phenylpropanolamine (DEA Form 250) filing and request.	
1315.32(g)—Procurement quota adjustment request for ephedrine, pseudoephedrine, phenylpropanolamine.	
1315.34(d)—Application for import quota for ephedrine, pseudoephedrine, phenylpropanolamine (DEA Form 488) request and filing.	
1315.36(b)—Request import quota increase for ephedrine, pseudoephedrine, or phenylpropanolamine	
Pharmaceutical Investigations Section	
1304.04(d)—ARCOS separate central reporting identifier request.	Drug Enforcement Administration, Attn: ARCOS Unit/ODPT, P.O. Box 2520, Springfield, VA 22152–2520 OR Drug Enforcement Administration, Attn: ARCOS Unit, 8701 Morrissette Drive, Springfield, VA 22152.
1304.33(a)—Reports to ARCOS.	
DEA Registration Section	
1301.03—Procedures information request (controlled substances registration).	Drug Enforcement Administration, Attn: Registration Section/ODR P.O. Box 2639, Springfield, VA 22152–2639.
1301.13(e)(2)—Request DEA Forms 224, 225, and 363.	
1301.14(a)—Controlled substances registration application submission.	
1301.18(c)—Research project controlled substance increase request.	
1301.51—Controlled substances registration modification request.	
301.52(b)—Controlled substances registration transfer request.	
1301.52(c)—Controlled substances registration discontinuance of business activities notification.	
1309.03—List I chemicals registration procedures information request.	
1309.32(c)—Request DEA Form 510.	
1309.33(a)—List I chemicals registration application submission.	
1309.61—List I chemicals registration modification request.	
DEA Hearing Clerk	
1301.43—Request for hearing or appearance; waiver.	Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, VA 22152.
1303.34—Request for hearing or appearance; waiver.	
1308.44—Request for hearing or appearance; waiver.	
1316.45—Hearings documentation filing.	
1316.46(a)—Inspection of record.	
1316.47(a)—Request for hearing.	
1316.48—Notice of appearance.	
DEA Federal Register Representative	
1301.33(a)—Filing of written comments regarding application for bulk manufacture of Schedule I and II substances.**	*http://www.regulations.gov/*. Drug Enforcement Administration, Attn: Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, VA 22152.
1301.34(a)—Filing of written comments regarding application for importation of Schedule I and II substances.**	
1303.11(c)—Filing of written comments regarding notice of an aggregate production quota.**	
1303.13(c)—Filing of written comments regarding adjustments of aggregate production quotas.**	
1303.13(c)—Filing of written comments regarding adjustments of aggregate production quotas.**	
1308.43(g)—Filing of written comments regarding initiation of proceedings for rulemaking.**	

* Applications/filings/reports are required to be filed electronically in accordance with this chapter.

** Applications/filings/reports may be filed electronically in accordance with this chapter.

Dated: September 1, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–21589 Filed 9–14–16; 8:45 am]

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Part III

Federal Trade Commission

16 CFR Part 305
Energy Labeling Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB15

Energy Labeling Rule

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Final rule.

SUMMARY: The Commission issues final amendments to improve access to energy labels online and improve labels for refrigerators, ceiling fans, central air conditioners, and water heaters. The Commission is issuing these amendments to assist consumers in their purchasing decisions and ensure labels are consistent with Department of Energy requirements.

DATES: The amendments to 16 CFR 305.3(x), 305.13, and Sample Label 17 of Appendix L are effective on September 17, 2018. All other amendments published in this document are effective on June 12, 2017.

ADDRESSES: Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule ("Rule") in 1979,[1] pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).[2] The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many of the covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on Web sites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three key disclosures: Estimated annual energy cost; a product's energy consumption or energy efficiency rating as determined from DOE test procedures; and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. For cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.,* electricity, natural gas, oil) as calculated by DOE. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements.[3]

II. Final Amendments to the Energy Labeling Rule

In a November 2, 2015 Notice of Proposed Rulemaking ("2015 NPRM" or "NPRM"), the Commission sought comment on several proposed changes to the Energy Labeling Rule.[4] The Commission received 17 comments in response.[5] Pursuant to the NPRM and these comments, this final rule contains amendments for an online label database (label image reporting), revised ceiling fan labels, new refrigerator comparability range information, dual-mode refrigerator labeling, revised central air conditioner labels, and revised water heater labels.[6] In a separate notice, the Commission will seek comments on issues that involve recent DOE regulatory actions or new issues raised by commenters in this proceeding, including portable air conditioner labeling, plumbing disclosures changes, large ceiling fan labels, and electric instantaneous water heater labeling.

A. Online Label Database

Background: In the NPRM, the Commission sought comments on the development of a centralized label database to provide retailers and consumers with convenient access to energy labels.[7] To create such a comprehensive database, the Commission specifically proposed requiring manufacturers to submit links to their EnergyGuide and Lighting Facts labels through their routine report to the DOE's Compliance Certification Management System (CCMS) pursuant to section 305.8.[8] The NPRM explained that this proposal would give online retailers access to digital labels for advertising or label replacement, obviating the need to obtain labels from individual manufacturers. The Commission explained that access to a single comprehensive database containing all the covered labels would benefit both consumers and retailers. Retailers could use the data for advertising and replacing missing labels for their display models, and consumers could use it to easily research comparative efficiency.[9]

In the NPRM, the Commission predicted this proposal was unlikely to create undue burdens on manufacturers. The current Rule already requires manufacturers to post product labels on their own sites.[10] It also requires manufacturers of most covered products to submit annual reports, although such reporting requirements are largely harmonized with DOE's. The proposed FTC requirements would allow manufacturers to submit their label links through DOE's CCMS. Under the proposal, manufacturers would submit the label links prior to distributing their products in commerce, consistent with current labeling requirements. The Commission also explained that it planned to give industry members ample time to make any necessary changes to their Web sites to facilitate compliance.

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[1] 44 FR 66466 (Nov. 19, 1979).

[2] 42 U.S.C. 6294. EPCA also requires the Department of Energy (DOE) to develop test procedures that measure how much energy appliances use, and to determine the representative average cost a consumer pays for different types of energy.

[3] 16 CFR 305.10.

[4] 80 FR 67351 (Nov. 2, 2015).

[5] The comments received in response to the 2015 NPRM are here: *https://www.ftc.gov/policy/public-comments/initiative-601.* The comments included: A. O. Smith Corporation (#00008); American Lighting Association (ALA) (#00013); Association of Home Appliance Manufacturers (AHAM) (#00016); Air Conditioning, Heating and Refrigeration Institute (AHRI) (#00015); Amazon (#00017); Bradford White Corporation (BWC) (#00010); CSA Group (#00007); California Investor Owned Utilities (California IOUs) (#00019); Earthjustice ("Joint Commenters") (#00018); GE Appliances (GEA) (#00012); Goodman Global, Inc. (#00020); International Association of Plumbing and Mechanical Officials (IAPMO) (#00022); Lochinvar, LLC (#00009); NSF International (#00005); Plumbing Manufacturers International (PMI) (#00006); Rheem Manufacturing Company (#00014); Tyler Prough (#00003); and Whirlpool Corporation (#00011).

[6] The Commission also sought comment on a few of these issues during its review of the Energy Labeling Rule. *See* 77 FR 15298 (Mar. 15, 2012); and 79 FR 34642 (June 18, 2014).

[7] The Commission also sought comments on this issue in a June 18, 2014 Supplemental Notice of Proposed Rulemaking (SNPRM) (79 FR 34642). As explained in an earlier final rule, this requirement would not apply to private labelers, but manufacturers would be allowed to arrange with third parties, including private labelers, to display the labels and to submit the required links to CCMS. *See* 78 FR 2200, 2205 (Jan. 10, 2013).

[8] *See* 10 CFR 429.12. The proposed requirement stems from EPCA's mandate that manufacturers "provide" a label, the Commission's general authority to require manufacturers to submit information, and the Commission's authority to specify the manner in which labels are displayed. 42 U.S.C. 6296(a) and (b); 42 U.S.C. 6294(c)(3).

[9] In January 2013, the Commission amended section 305.6 of the Rule to require manufacturers to make copies of their EnergyGuide and Lighting Facts labels available on a publicly accessible Web site. *See* 78 FR 2200, 2205 (Jan. 10, 2013). In doing so, the Commission aimed to improve the availability of online labels for retailers that sell covered products online.

[10] 16 CFR 305.6.

Comments: The commenters split in their support of the proposed reporting requirements. Appliance and ceiling fan manufacturers objected, asserting it would create burdens, questioning its utility, and raising several legal concerns. Conversely, energy efficiency and consumer groups, retail sellers, and heating and cooling equipment manufacturers generally supported the proposal, while providing a few suggestions discussed below.

Critics argued that the proposal's costs outweigh its benefits. AHAM, representing appliance manufacturers, asserted that the label link submissions would increase manufacturer burdens while providing little benefit to consumers and retailers. Similarly, ALA, which represents ceiling fan manufacturers, added that the proposal would complicate existing requirements and pose significant added burdens. ALA also questioned the need for the change, arguing that ceiling fan customers are already comfortable with using existing Web sites to comparison shop. AHAM, as well as GEA, further explained the requirement would create difficult coordination issues between various manufacture-related teams (*e.g.,* engineering, design, Web site, etc.) and would delay product deployment.[11] According to AHAM and Whirlpool, even short delays could cause manufacturers to miss deadlines and significantly disrupt business, jeopardizing a manufacturer's market position and causing financial loss. In addition, AHAM argued that the proposal could lead to the premature disclosure of competitive information, such as capacity and energy efficiency, several weeks before such information is normally available to competitors.[12] Finally, these commenters indicated that frequent Web site changes would pose additional compliance burdens, particularly if manufacturers had to change their certification reports every time they change labels on their Web site.

In addition to these concerns about the proposal's burdens, AHAM raised two legal objections. First, it questioned whether EPCA grants the Commission authority to determine the content of DOE's reports. AHAM noted that the Commission streamlined the data reporting requirements in 2013 by permitting manufacturers to file their FTC-required annual reports on DOE's CCMS. However, in AHAM's view, that rulemaking differed from the present proposal because it "did not merge the DOE and FTC reporting requirements themselves." According to AHAM, DOE is the agency with authority to require reporting on CCMS and, thus, DOE must effect changes to those reporting requirements through its own rulemaking. Second, AHAM argued the proposal would force manufacturers to violate DOE rules requiring manufacturers to certify that their covered products comply with applicable energy conservation standards. AHAM explained that, before distributing any basic model in commerce, manufacturers must submit a certification report to DOE.[13] In determining whether a model has been "distributed in commerce," DOE considers several factors, including whether the units have appeared in public marketing material (*e.g.,* on Web sites or in catalogs), whether such marketing material includes energy efficiency information, and whether the manufacturer has shown the unit at a trade show.[14] Therefore, to avoid distributing a product in commerce prior to certification, manufacturers typically do not publicly release energy labels until a basic model has been certified to DOE. AHAM warned that the FTC proposal could force manufacturers to violate DOE requirements by forcing them to upload their energy labels prior to DOE certification.[15]

In contrast, many commenters supported the proposal. The Joint Commenters argued that the benefits of a centralized label database greatly exceed the burden imposed on manufacturers. Amazon, an online retailer that sells covered products, explained that the "database would allow consumers to easily research the comparative efficiency of covered products" and will help increase Rule compliance and decrease mislabeling. According to Amazon, the proposal would not impose undue burdens on manufacturers because the Rule already directs them to have the labels available on a Web site.

However, these commenters qualified their support with several recommendations. First, Amazon urged the Commission to require manufacturers to submit labels "as a stand-alone image in a standardized format." It also recommended that the Rule require a UPC (universal product code) and label date information. Second, the Joint Commenters urged the Commission to extend the Rule to cover products not presently subject to reporting requirements, such as specialty consumer lamps and LED general service lamps. They asserted this extension would help consumers compare products through DOE's database. The Joint Commenters further suggested that, even if the FTC does not require label reporting for those products, it should provide manufacturers the option to submit such information. Finally, the Joint Commenters argued that DOE enforcement guidance can easily address any potential enforcement problems. In addition, to avoid any conflicts with DOE's requirements, they suggested that FTC allow manufacturers to delay activation of the Web site address submitted to CCMS for a certain time period after submittal (*e.g.,* seven days after certification) so that manufacturers would not need to post labels prior to DOE certification.

Other industry commenters offered qualified support for the proposal. For instance, though backing the proposal generally, AHRI and Goodman recommended the Rule allow manufacturers to submit links to a PDF download of the labels, in addition to a URL. AHRI already maintains an online database as part of its own directory, which generates label PDFs for public users but not a URL link. According to AHRI, given this current arrangement, a mandatory URL link requirement would be costly and burdensome. Therefore, AHRI recommended the amendments allow manufacturers to submit a link to a PDF download to CCMS. AHRI explained that this would provide the same information as a URL, without significant additional costs and maintenance.[16]

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[11] Whirlpool explained that the proposal would require it to reverse its current process, whereby it holds off on creating Web pages for individual models and uploading labels to its Web site until after it receives DOE certification. According to Whirlpool, any delay in this process would slow certification and disrupt business. Whirlpool also explained that the proposal would require significant coordination with private labelers, particularly when manufacturers certify models for private labelers.

[12] AHAM also indicated that, under current requirements, DOE requires manufacturers to report discontinued models for a slightly longer period of time than does the FTC.

[13] *See* 10 CFR 429.12(a).

[14] *See, e.g.,* 76 FR 12422, 12426–27 (Mar. 7, 2011). EPCA defines "distribute in commerce" as "to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." 42 U.S.C. 6291(16).

[15] Whirlpool added that the proposal could lead to similar problems with ENERGY STAR program requirements.

Some commenters suggested that the Commission allow manufacturers to provide a link to a general Web site containing their labels, instead of submitting links to individual labels. Lochinvar, a water heater manufacturer, argued this would give manufacturers flexibility in generating and maintaining the online EnergyGuide labels. Although Whirlpool opposed the proposal, it suggested the FTC give manufacturers more flexibility should it finalize the proposed reporting requirements. Specifically, it suggested the Rule allow manufacturers to submit a link to the manufacturer's online public database housing all EnergyGuide labels, searchable by model number. According to Whirlpool, consumers and retailers could then access the label by copying the model number from the CCMS into the manufacturer's site. This approach would also provide consumers and retailers access to additional information, such as installation instructions, use and care guides, and product dimensions. Whirlpool also recommended that FTC grandfather existing models currently in the CCMS to avoid the many hours necessary for manufacturers to retrieve EnergyGuide labels for thousands of models already in commerce.

Discussion: The final amendments require manufacturers to provide links to their online labels as part of the Rule's reporting requirements. Consistent with the other reporting provisions, the final amendment allows manufacturers to submit the links to DOE's CCMS as part of their normal FTC reporting. The new requirement will become effective in one year. After that date, manufacturers must begin submitting the required label links as part of all new model and annual reports required under section 305.8.

The final Rule contains several changes and clarifications to address commenters' concerns. First, the amendments allow manufacturers to submit their links when they certify their models to DOE *or* at the next subsequent annual report date. This eliminates concerns about posting labels prior to DOE certification and will ensure that labels are available online within a reasonable time period.[17] Second, the final Rule provides manufacturers three options for submitting label information: (1) Through direct URL links to the labels themselves; (2) through links to a PDF download; or (3) through a link to a Web site from which users can obtain labels by searching through model number. If manufacturers use the third approach, the link must take the user directly to the search function on the manufacturer's Web site. These three options strike a balance between ensuring the labels are available from a central location and giving manufacturers flexibility in managing their own Web sites.

Contrary to one suggestion, the final Rule does not grandfather existing labels. Because some models remain in production for many years, the requested exemption would permanently exclude long-lived models from the database. However, to ensure manufacturers have ample time to comply, the final Rule will not become effective for one year after publication. Accordingly, manufacturers must begin submitting label links for existing models at the first applicable annual reporting date (see section 305.8) following this one-year period.

The final amendments do not include lighting products in the reporting requirements. Current law prohibits DOE from spending funds for the enforcement of DOE efficiency standards related to several types of light bulbs, including many currently subject to FTC labeling requirements.[18] Therefore, to avoid potential DOE issues related to this prohibition, the Commission has not included lighting products in the new reporting requirement. It may revisit this issue at a later date should circumstances warrant.

Finally, the commenters questioned DOE and FTC authority to collect information on DOE's Web site without a separate DOE rulemaking. The Commission has identified no legal impediment to such an arrangement. As previously noted, the FTC is issuing the label image reporting requirements pursuant to its authority under EPCA. The final Rule does not impose separate DOE requirements and, therefore, DOE need not issue its own rule. In addition, these new FTC requirements are consistent with existing FTC reporting provisions, which apply both to products also covered by DOE's reporting requirements, as well as products DOE does not cover (*i.e.,* televisions and ceiling fans). In issuing its own reporting requirements under section 305.8, the FTC has allowed manufacturers to submit data through DOE's existing online database to avoid duplication and complication.[19] The final language clarifies that the amendments do not "merge" the two agencies' reporting requirements. Specifically, the final Rule language appears in section 305.8 ("Submission of Data") rather than section 305.6 ("Duty to provide labels on Web sites"), and states that manufacturers may submit the information to DOE via CCMS in lieu of submitting it to the Commission.

B. Improved Ceiling Fan Labels

Background: In the 2015 NPRM, the Commission proposed revising the ceiling fan label to include estimated annual energy cost information as the label's primary disclosure and to otherwise ensure the label is consistent with other EnergyGuide labels. The current label, which appears on product boxes and bears the title "Energy Information," discloses airflow (cubic feet per minute), energy use (watts), and energy efficiency (cubic feet per minute per watt) at high speed. However, as the Commission previously stated, consumer research suggests energy cost information is the most useful metric because it "provides a clear, understandable tool to allow consumers to compare the energy performance of different models." [20] The label proposed in the 2015 NPRM follows the EnergyGuide label format, consistent with other products displayed in showrooms, such as refrigerators and clothes washers.[21]

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[16] AHRI also requested that section 305.6, which requires manufacturers to maintain labels on a publicly accessible Web site "for six months after production of that model ceases," be revised to clarify that manufacturers may maintain labels online more than six months after production for a particular model ceases.

[17] For models no longer in production, manufacturers may maintain labels online for longer than the six-month period identified in the Rule.

[18] *See* Consolidated Appropriations Act, 2016, Pub. L. 114–113 (Div. D, Title III, Sec. 312).

[19] Prior to 2013, FTC collected energy data on covered products separate from DOE through paper and email submissions to the Commission itself. This arrangement required manufacturers to submit nearly duplicative reports to DOE and FTC. However, in 2013 (78 FR 2200), the Commission streamlined and harmonized the reporting requirements by giving manufacturers the option to report FTC-required data through DOE's CCMS, in lieu of the traditional practice of submitting directly to FTC. The present amendments follow the same approach.

[20] 72 FR 49948, 49951, 49953 (Aug. 29, 2007) (appliance labels) ("The FTC's consumer research clearly indicates that cost information is likely to assist consumers in making purchasing decisions. While each of the designs considered has strengths and weaknesses, on balance, the Commission believed that the adoption of a design that presents cost as the primary disclosure would best serve consumers."); *see also* 75 FR 41696 (July 19, 2010) (light bulb labels); 76 FR 1038 (Jan. 6, 2011) (television labels).

[21] 80 FR 67351.

In seeking comments on the label change, the Commission noted that DOE is in the process of changing test procedures and developing new efficiency standards for ceiling fans.[22] As part of the test procedure proceeding, DOE is revising various factors essential to the label, including the representative hours of operation, a representative or average testing speed, and a revised product scope covered by the test procedure.[23] In the 2015 NPRM, the Commission announced it would wait for DOE to complete its test procedure changes before finalizing the label. To ensure consistency with the DOE testing requirements, the Commission proposed to adopt final DOE use and operating assumptions for the amended label, including the hours of operation, the representative or average speed, and the revised product coverage.[24] The Commission indicated it would allow a two-year compliance period for the new label, once DOE issues its final Rule.[25]

Comments: Commenters generally supported the proposal. For example, the Joint Commenters noted that the two-year compliance period was consistent with the compliance period afforded to manufacturers for the original ceiling fan label issued in 2007 and that ceiling fan packaging already allocates space to FTC labels. However, some commenters raised logistical and implementation issues with the proposal. First, industry commenters urged the Commission to coordinate the timing of new labels with DOE efforts to revise the test procedure and set efficiency standards. ALA emphasized that manufacturers will need time to review the new requirements, develop and test products, and prepare new packaging with the revised labels. It agreed that a two-year compliance period is reasonable but encouraged the Commission to consider delaying enforcement action for an additional 18 months to allow for the resolution of unforeseen problems. Second, ALA raised concerns with the label's color because some manufacturers do not use color in printing their packages. It warned that a mandatory yellow background would significantly increase costs in some cases. To address this concern, ALA recommended the Rule allow a white background when a product package does not contain color. Also, given the small sizes of some fan packaging, it urged the Commission to ensure that the new label is no larger than the existing label.

Discussion: The Commission has revised the ceiling fan label consistent with its proposal. The final label's content includes new information to reflect the content of DOE's new test procedure published July 25, 2016.[26] Such updates include DOE's new definition of "ceiling fan," energy information based on the new DOE-mandated average fan speed, as well as the DOE-established hours of operation per day (6.4). The new label also contains comparability information based on DOE data for the products covered by the test procedure.[27]

In response to some commenter concerns, the final Rule does not mandate a yellow background. Specifically, it indicates that the label must be printed on a yellow or other neutral contrasting background. This approach, also used for the Lighting Facts label, avoids imposing increased compliance costs.

Additionally, the final Rule requires manufacturers to begin labeling their packaging with the new label within two years of the final Rule's publication. Manufacturers may begin using the new label earlier, as soon as they complete testing under the new DOE test procedure.

Finally, the final label does not apply to large-diameter fans (*i.e.,* fans with diameters of 84 inches or greater) and high-speed small diameter fans, new fan categories added by DOE's test proceeding. The DOE test procedure mandates unique operating assumptions (hours per day) for these particular models. As a result, labels for these two groups of fans may not offer accurate comparisons to more conventional fans. The Commission will seek comment on the need for, and content of, fan labels for those two product categories in a separate notice.

C. Consolidated Refrigerator Ranges

Background: Based on comments suggesting that a substantial number of consumers consider several different configurations when shopping, the 2015 NPRM proposed requiring disclosure of two cost ranges on the refrigerator label: One range for the existing applicable refrigerator configuration (*e.g.,* side-by-side door configuration) and the other range covering all refrigerators. The Commission previously explained that providing cost information for all refrigerators consolidated into a single range would facilitate comparison shopping and alert consumers to the relative energy efficiency of various refrigerator types.[28] Consistent with the current Rule, both range groups under the 2015 proposal would include separate ranges organized by capacity.

The current Rule organizes refrigerator comparability ranges by configuration (*e.g.,* models with top-mounted freezers), designating eight separate categories for refrigerators and three for freezers.[29] Five of those categories (or styles) apply to automatic-defrost refrigerator-freezers, which populate the bulk of showroom floors: Side-by-side door models with and without through-the-door ice service; top-mounted freezer models with and without through-the-door ice service; and bottom-mounted freezer models.[30] The comparability ranges, which disclose the energy costs of the most and least efficient model in each category, allow consumers to easily compare the energy use of similarly configured units.

In the 2015 NPRM, the Commission explained that information submitted in earlier comments suggested that a substantial number of consumers consider models with different features when shopping.[31] However, as explained in previous comments, not all shoppers do so. The proposal addressed both contingencies by allowing consumers to compare the labeled product to similar models as well as to all other refrigerators. The proposal also maintained the three freezer categories: Upright manual defrost models (Appendix B1), upright automatic defrost models (Appendix B2), and chest freezers (Appendix B3) because there is no evidence that consumers typically shop for models across these categories.

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[22] *See* 79 FR 62522 (Oct. 17, 2014) (proposed test procedure); 79 FR 58290 (Sept. 29, 2014) (proposed standards).

[23] DOE issued a supplemental notice for the test procedure on June 3, 2015 (80 FR 31487).

[24] *See, e.g.,* 79 FR 62521.

[25] In its test procedure Notice (79 FR at 62524 (Oct. 17, 2014)), DOE proposed a special testing approach for "multi-mount" fan models under the Rule's coverage. Such models can be installed in two configurations: extended from the ceiling or flush with the ceiling (*i.e.,* a "hugger" configuration). DOE proposed to require testing for these models at two separate configurations. Should DOE adopt such an approach, the Commission, in its 2015 Notice, proposed that the EnergyGuide label for these models would reflect the lowest efficiency (cubic feet per watt) configuration, with the option of providing a second label depicting the performance at the other configuration.

[26] See 81 FR 48620.

[27] Specifically, consistent with the current label, the label amendments maintain two basic size categories for labeling purposes. The amendments adjust these two bins to reflect new size categories established by DOE: (1) Fans less than 19 inches in diameter; and (2) fans from 19 or more inches and less than 84 inches in diameter. The Rule does not create separate comparability categories for niche product types recognized by DOE such as "highly-decorative," belt-driven, and hugger fans, as such separate bins do not appear necessary to aid consumers in comparing products. The final amendments also contain conforming changes to the reporting requirements in section 305.8, removing the term "at high speed" to ensure consistency with the new DOE test procedure.

[28] 79 FR at 34651.

[29] The Rule further divides each model category into several size classes (*e.g.,* 19.5 to 21.4 cubic feet), each with its own comparability range.

[30] *See* 16 CFR part 305, Appendices A and B. The Rule also has other range categories for less common models, including those with manual and partial defrost, and refrigerator-only models. In addition, the freezer categories include upright models with automatic defrost, upright models with manual defrost, and chest freezers.

[31] 80 FR at 67354–5.

Additionally, the Commission proposed updated ranges based on new model data from the DOE database, including a new range reflecting consolidated range data for all refrigerators. Before issuing final refrigerator ranges, the Commission indicated that it would consider updating the numbers based on the most recent data. It also proposed to amend the range tables to cover bottom-mounted freezers with through-the-door ice, a popular product subcategory currently not covered by the various tables. To accomplish this, the proposed amendments redesignate Appendix A7, which currently covers an obsolete category (top-mounted freezer with through-the-door ice models). In addition, the proposal modifies the size categories in each table to ensure consistency in all the ranges across all sizes.[32]

Comments: The commenters sharply split on the proposed refrigerator label. The Joint Commenters and the California IOUs supported the proposal, while AHAM, representing appliance manufacturers, opposed it. The supporters argued the Commission's proposal represents a reasonable compromise between the various available options. They explained that, while some shoppers are committed to models with particular features, others are more flexible and willing to trade off those features for reduced utility bills. The Joint Commenters also asserted the two comparison ranges on the proposed label were unlikely to confuse consumers. They noted that the EnergyGuide labels for heat pumps already feature two comparability ranges and have done so for nearly 30 years and that the label "clearly indicates what each range bar depicts." The California IOUs argued the proposed label would continue to help customers understand a unit's energy cost relative to similarly configured products, particularly since many customers continue to shop for configurations matching their current model. These commenters further indicated that the second range displaying the unit's energy cost relative to a broader array of models serves to educate consumers about their potential buying choices, and contributes to a more informed decision-making process.

While they supported the overall proposal, the Joint Commenters urged the FTC to break the "All Models" range into three separate categories: Automatic defrost refrigerator-freezers, manual or partial automatic defrost refrigerators and refrigerator-freezers, and refrigerators with automatic defrost but no freezer. They noted that consumers do not frequently shop for refrigerator-only models (*i.e.,* refrigerators with no freezer). In their view, some consumers may be disappointed to discover some of the high efficiency models reflected on the range have no freezer. According to the commenters, such a result could undermine consumer trust in EnergyGuide's comparison ranges for other products.

In contrast, AHAM opposed a consolidated range for the refrigerator label. Specifically, AHAM questioned the data supporting such a change. In particular, it argued that a study of EarthJustice members submitted in earlier comments surveyed biased respondents who may better understand energy consumption than the average consumer. In addition, AHAM stated that FTC has not demonstrated that consumers will understand the proposed label or that the consolidated range will assist their purchasing decisions. However, should FTC decide to move forward with changes, AHAM expressed a preference for the hybrid approach in the 2015 NPRM that includes two groups of ranges organized by both model subcategory and the consolidated range. AHAM stated this approach would preserve the opportunity for consumers to compare products of similar configuration and features. AHAM also suggested that FTC change the term "All Models" to indicate that the range depicts "all models of similar capacity" to avoid misleading consumers. It also asked the FTC to consider altering the current label to reduce the black ink required. According to AHAM, the ink required for this label increases drying times and printer jams. Finally, AHAM and Whirlpool urged the Commission to give manufacturers between six months and a year to implement the refrigerator changes to complete the many necessary activities for this change, including designing and contracting for the new labels, updating Web sites and certification reports, and coordinating between OEMs and private labelers.

Discussion: The Commission has amended the refrigerator labels as proposed and updated the comparability ranges. The revised label will likely help consumers shop among models by providing two types of comparative information, allowing consumers to compare the labeled product to similar models as well as to all other refrigerators. This hybrid approach reflects the likelihood that, while not all shoppers consider different configurations, a significant number do. The final Rule gives manufacturers nine months to implement the revised label. In response to commenter concerns over the black ink required for the label, the FTC staff will update the online label template for refrigerators and clothes washers to modify the black background to reduce the amount of ink consumed in printing the labels.[33]

The new label should aid consumers in their shopping decisions. Information provided by commenters strongly suggests that a substantial number of consumers consider models with different features when shopping. The Commission agrees with AHAM that the email survey submitted by the Joint Commenters does not offer compelling evidence because it involved a self-selected population of respondents. However, other information in the record suggests that a significant number of consumers consider different model configurations when shopping. For example, according to earlier comments, 40% of the visitors to Consumer Reports' online refrigerator ratings in 2012 reviewed multiple refrigerator-freezer configurations.[34] In addition, AHAM offered data indicating that only 46% of side-by-side refrigerator-freezer owners and 85% of top mount refrigerator-freezer owners replaced their units with the same configuration.[35] These numbers strongly suggest that a substantial proportion of consumers, though not all, consider different configurations. Other indicia of consumer shopping habits corroborate this conclusion. Specifically, online refrigerator buying guides routinely advise consumers about considering different configurations. The content of such sites confirm that consumer preferences for configuration are not pre-determined.[36] The new label will help both consumers who consider different configurations, and those who do not.

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[32] The Commission also proposed to eliminate an obsolete reference to adjusted volume for refrigerators and freezers in the Rule's capacity section (section 305.7(a)(b)).

[33] See *https://www.ftc.gov/tips-advice/business-center/guidance/energyguide-labels-templates-manufacturers.* In addition, manufacturers that do not use the FTC-provided templates may alter the black ink mix for their printers to reduce potential malfunctions.

[34] 79 FR at 34651. The Joint Commenters also reasoned that those who examined only one configuration probably considered models with, and without, through-the-door ice dispensers, and may have looked at an additional configuration on a subsequent visit. In addition, the Joint Commenters pointed to AHAM information demonstrating that more than half of side-by-side refrigerator-freezer owners buy replacement units with a different configuration. The commenters contended that this was probably a conservative estimate because it does not include owners who bought similarly configured replacement units with different features.

The Commission agrees with the Joint Commenters that the label change is unlikely to confuse consumers. The modification represents a relatively small addition to an existing element of the label's content; the primary focus of the label continues to be the cost of energy measured in dollars. In addition, the new label clearly identifies the two comparability ranges, as noted by the Joint Commenters, and provides additional information about those ranges in explanatory text. Accordingly, the Commission expects the two ranges will help improve consumer understanding of the trade-offs involved choosing a refrigerator. Although the Commission recognizes AHAM's concern about consumer understanding of the label, commenters did not provide evidence of confusion or of a more effective means of presenting this information. Nevertheless, to minimize potential concerns, the staff plans to prepare educational material about the label change.

The final Rule does not exclude certain refrigerators (*i.e.*, refrigerator-freezer models without automatic defrost and refrigerator-only models covered by Appendices A1 through A3) from the "All Models" range, as suggested by some commenters. The new range tables, which have been updated in the final rule based on more recent DOE data, do not reveal large differences between these models and the more common automatic defrost models covered by Appendices A4 through A7.[37] In addition, excluding these models from the comparability categories would require additional explanatory text and clutter the label with only a marginal benefit. Similarly, the revised label does not disclose on the range itself that the range applies to similarly sized models. Consistent with past versions of the label, such language appears on the lower part of the label.[38] Including additional information about "similarly-sized models" would add text and crowd the label potentially affecting usability.[39]

D. Dual Mode Refrigerator-Freezers

The final Rule contains an amendment related to dual mode refrigerator-freezers. In the NPRM, the Commission proposed adding a new provision addressing covered refrigerator models that can operate either as a refrigerator or a freezer under the DOE rules, depending on user settings. In 2014, DOE announced that these convertible models must be tested and certified to meet efficiency standards applicable to both refrigerators and freezers.[40] AHAM sought clarification on labeling these products, suggesting that, consistent with manufacturers' labeling practices, convertible products be labeled with the most energy intensive configuration. In the 2015 NPRM, the Commission agreed with this approach because it ensured that labels for these products do not underestimate a product's energy cost. Therefore, the proposed Rule stated that these products should be labeled with the most energy intensive configuration.[41] In response to the 2015 NPRM, AHAM supported the Commission's proposal, and no other commenters addressed the issue. Accordingly, the final Rule includes the proposed amendments for the dual mode refrigerator-freezers.

E. Heating and Cooling Equipment Label Requirements

Background: In the 2015 NPRM, the Commission proposed several amendments to the heating and cooling equipment label requirements, including label changes related to upcoming DOE enforcement requirements for regional standards, labels for rooftop furnace-air conditioner systems, manufacturer name disclosures, multiple model number disclosures, and a clarification to retailer disclosure requirements. The Commission discusses each of these issues below.

Revised Central Air Conditioner Labels Regarding Regional Standards: The Commission proposed several changes to the central air conditioner label in response to changes in DOE enforcement requirements regarding regional standards. The current EnergyGuide labels for these products provide industry members and consumers with information about regional efficiency standards issued by DOE in 2011.[42] These DOE requirements impose regional efficiency standards for split-system air conditioners and single-package air conditioners. For all other covered heating and cooling equipment (*e.g.*, furnaces and boilers), the updated standards remain nationally uniform. Since publication of the regional standards related-labels in 2013, the Commission has issued several notices updating ranges and labels to reflect a court-approved settlement that vacated DOE's regional standards for furnaces.[43]

During the fall of 2014, DOE conducted a negotiated rulemaking to establish enforcement rules for current regional standards applicable to central air conditioners.[44] The current standards set a minimum 14.0 Seasonal Energy Efficiency Ratio (SEER) for the southern and southwestern regions, a 13.0 SEER for all other areas, and separate Energy Efficiency Rating (EER) levels for the southwest region. For a particular condenser model, efficiency ratings vary (*e.g.*, 13.0 to 14.2 SEER) depending on the condenser-coil combination installed in the consumer's home. Because such variability complicates efforts to enforce the regional standards, the consensus recommendation from the negotiated rulemaking advised DOE to determine regional compliance based on the condenser's lowest certified rating alone, not on the system rating (*i.e.,* the specific condenser-coil combination) installed in a consumer's home.[45] For instance, if a condenser's efficiency rating ranges from 13.0 to 14.2 SEER (depending on the coil ultimately matched with it), the rating will be 13.0 SEER for regional standards compliance, regardless of the coil with which it is ultimately installed. This recommended approach to DOE's enforcement would require revising the EnergyGuide label for central air conditioners because the current label advises installers to ensure the rating for the system they install in a consumer's home meets the DOE regional standards.

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[35] AHAM comments (July 16, 2012) (#560957–00023).

[36] *See, e.g.*, CNET *(http://www.cnet.com/topics/refrigerators/buying-guide)*, Consumer Reports *(http://www.consumerreports.org/cro/magazine-archive/2011/july/appliances/refrigerators/types/index.htm)*, Consumersearch *(http://www.consumersearch.com/refrigerators/how-to-buy-a-refrigerator);* and Good Housekeeping *(http://www.goodhousekeeping.com/appliances/refrigerator-reviews/a18621/refrigerator-buyers-guide/)*.

[37] The DOE data indicate that models from Appendices A1, A2, and A3 are available in seven of the eleven size categories. There are few models from Appendix A1 through A3 at the higher capacity categories. In addition, for those seven size categories that do contain models from A1, A2, and A3, the estimated annual energy cost difference between the highest efficiency models in A1–A3 and those in A4–A8 is about $7 on average.

[38] In the past, the range has simply stated "Cost Range of Similar Models."

[39] Finally, GEA requested that the FTC update the capacity disclosure on the sample refrigerator label so that it conveys capacity to the nearest tenth, consistent with the Rule at section 305.7. GEA also request a clarification that the product attributes (*e.g.*, bottom-mount freezer) included on labels match those described in the Rule at Appendix L. According to GEA, some manufacturers place additional product descriptors on their labels not identified in the Rule. The amendments address these two issues.

[40] 79 FR 22320 (Apr. 21, 2014). The amendments also contain a minor correction to the metric conversions for label sizes in section 305.11(a).

[41] 80 FR at 67356.

[42] 78 FR 8362 (Feb. 6, 2013).

[43] *See* 79 FR 46985 (Aug. 12, 2014); 79 FR 52549 (Sept. 4, 2014); 79 FR 77868 (Dec. 29, 2014). On April 24, 2014, the Court of Appeals for the D.C. Circuit approved a settlement in the DOE litigation, which vacates and remands DOE's regional standards for non-weatherized natural gas and mobile home furnaces and sets a two-year timetable for DOE to propose new standards. *American Public Gas Ass'n* v. *DOE*, No. 11–1485 (D.C. Cir. filed Dec. 23, 2011) (DE.#1433580, May 1, 2013).

[44] *See, e.g.*, 79 FR 45731 (Aug. 6, 2014).

To conform the FTC label to this proposed DOE enforcement framework, the Commission proposed new labels for split-system central air conditioners that simply identify the states in which the labeled model may be installed.[46] Specifically, the FTC proposed three types of labels for split systems. First, labels for models that may be installed anywhere (*i.e.,* those that meet all applicable SEER and EER thresholds) would contain the statement: "Notice: Federal law allows this unit to be installed in all U.S. states and territories." Second, labels for models that do not meet the 14.0 SEER threshold for southern states and southwestern states would contain a map identifying the states in which the unit may be legally installed. For instance, a model with a minimum rated efficiency of 13.8 SEER would contain a map indicating that that model can be legally installed only in northern states along with a statement that "Federal law prohibits installation of this unit in other states." Finally, labels for a model with a minimum 14.0 SEER rating that does not meet EER minimum ratings for the southwest region would contain a map indicating that it can be legally installed only in northern and southern states (excluding southwestern states), as well as a statement that installation elsewhere is prohibited. These new label disclosures would simplify compliance by eliminating the need for installers to compare specific system ratings against the DOE standards.

In addition, consistent with the approach recommended by the DOE working group, the proposed label disclosed only the efficiency rating for lowest rated coil-condenser combination (*e.g.,* 14.4 SEER) in lieu of the current label's approach, which depicts a "mini-range" of the high and low values associated with the labeled model's various certified condenser-coil combinations (*e.g.,* 13.9–15.0 SEER). The range of ratings on the current label alerts installers and consumers that a model's compliance with regional standards could vary depending on the installed coil-condenser combination. However, given the enforcement approach developed during DOE's negotiated rulemaking, such information is no longer necessary. A single, minimum efficiency rating will provide a simpler, more direct way to communicate the model's performance. If a system, as actually installed, has a higher efficiency rating than the minimum rating displayed on the label, that installer may communicate that fact to consumers.

Rooftop Systems: The Commission also proposed amending section 305.12 to allow a single label for packaged rooftop systems, a relatively new product consisting of a combination gas furnace and air conditioner (or heat pump). The proposed label would reflect the ratings for furnace and air conditioner (or heat pump) combinations as long as the unit meets all applicable air conditioner regional standards. For models that do not meet these standards, manufacturers would have to use two labels because a single label would not have space to accommodate all necessary disclosures (*e.g.,* the annual fuel utilization efficiency (AFUE), SEER, and regional standards map).

Manufacturer Name: In the NPRM, the Commission sought comments on the label's disclosure of the manufacturer (or private labeler) name. In 2013, the FTC amended the heating and cooling equipment labels to require the manufacturer or private labeler's name. This change occurred as part of the larger effort to create new labels consistent with new DOE regional efficiency standards.[47] However, the Rule's current requirements for labels on refrigerators, clothes washers, and other appliances (section 305.11) continue to give manufacturers or private labelers the option to put their names on labels. To ensure the heating and cooling labels are consistent with other EnergyGuide labels, the Commission proposed to restore the option of including the manufacturer or private labeler name on the label. The Commission stated that making the manufacturer's name optional should not negatively impact consumers. For instance, consumers do not need a manufacturer or private labeler name to use the DOE database, including the cost calculator, because the model number is adequate for that purpose. In addition, because the labels are generally affixed to the products themselves or appear on Web sites describing the product, consumers are likely to already know the identity of the equipment's manufacturer or private labeler.

Model Numbers: The Commission also proposed clarifying in sections 305.12(f)(3) and (g)(3) that manufacturers or private labelers may print multiple model numbers on a single label as long as the models share the same efficiency ratings and capacities. In the original 1979 rulemaking notice, the Commission explained that manufacturers and private labelers could do so; however, associated language did not appear in the Rule itself.[48] By ensuring that all model numbers listed in a single label share the same capacity, as well as efficiency rating, the proposed clarification would ensure all model numbers listed on a single label generate the same cost calculations when entered into the DOE online database.

Updating Retailer Disclosure Requirements (§ 305.14): The Commission also announced that it would revise the effective date for section 305.14's disclosure requirements relating to efficiency information that furnace and air conditioner installers must provide to customers.[49] In 2013, the Commission tied the effective date for the new provision to the compliance date for DOE regional furnace standards. However, because those DOE standards were subsequently vacated,[50] the Commission must set a new effective date. Accordingly, the Commission proposed to update that provision to clarify that the 2013 amendment now applies.

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[45] *See* "2014–10–24 Presentation Hand Out: Regional Standards Enforcement Working Group, Enforcement Plan," Oct. 24, 2014, Energy Efficiency and Renewable Energy Office, Department of Energy, *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-CE-0077-0070.*

[46] Such an approach is consistent with the current regional standards labels for single package units. *See, e.g.,* 78 FR at 8384 (sample label).

[47] *See* 78 FR 8362 (Feb. 6, 2013). Though the proposed Rule language in 2012 contained this change (77 FR 33337 (June 6, 2012)), the Notice did not discuss this issue. In issuing the original labeling rule in the 1970's, the Commission noted that the manufacturer and private labeler name was optional on EnergyGuide labels to "minimize the printing burden on manufacturers who produce covered products for private labelers. . . ." 44 FR 66466, 66470, 66479 (November 19, 1979).

[48] *See* 44 FR at 66470 ("a manufacturer or private labeler may include multiple model numbers on the label if the models have the same capacity and consume the same amount of energy").

[49] In 2013, as part of the regional standards label rulemaking (78 FR 8362), the Commission updated disclosure requirements in section 305.14 for manufacturers and retailers, including installers. The 2013 changes required sellers to ensure that consumers have pre-purchase access to the EnergyGuide labels for heating and cooling equipment. Previously, the Rule required sellers to disclose a list of information contained on the labels. The updated Rule simplified the disclosure by requiring retailers to provide access to the labels themselves.

Comments: Regional Standards Information: The commenters generally supported the proposed revisions to the central air conditioner labels. AHRI explained that the state-specific information on the bottom of the proposed label is needed to clarify where a specific model may be sold. The Joint Commenters and the California IOUs emphasized that the label provides an important regional standards compliance tool. They also explained that the proposed changes accurately reflect the consensus recommendations of the DOE working group (Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)) convened to negotiate compliance and enforcement implementation for those standards.[51] However, in addition to generally supporting the proposed label, the commenters raised several specific issues related to the proposal, including concerns about the SEER ratings for models, comparability ranges for the label, and the timing of the revised label. We discuss these comments below.

While the commenters generally supported the proposal, they disagreed on how the label should present a model's specific SEER rating. Industry members opposed the proposal to eliminate the model-specific SEER and EER ranges ("mini-ranges") for split-system air conditioners. For example, Goodman explained that this current information, which the Commission only recently added to the label, is essential to fully inform consumers about the range of available efficiencies. In Goodman and AHRI's view, the proposed single rating approach, which depicts the lowest efficiency rating of all certified coil-condenser combinations for the unit, would mislead some consumers who purchase systems with much higher ratings. AHRI further contended that the model-specific range information is helpful because it clearly displays comparable efficiencies and its removal would unnecessarily burden manufacturers.

The California IOUs noted that the ASRAC working group, which included industry representation, advised DOE to determine the "regional compliance based on the condenser's lowest certified rating alone, not on the system rating as installed in the home." Thus, according to the California IOUs, the working group consensus was to disclose "only the efficiency rating for the lowest rated coil-condenser combination" and eliminate the current model-specific range.[52]

Some commenters also suggested changing the label's comparability range for similar models on the market. AHRI, for example, requested that, for split system units covered by the range table in Appendix H, the low end of the range should be 13 SEER on labels for models allowed in northern states only, and 14 SEER for the two other label types described in the proposal. The current table has a low SEER of 13 for all units. By removing the 13 SEER from the range's lower end for products sold in southern states, the recommended change would eliminate confusion regarding the regional standards.

Finally, the commenters addressed the timing of the labeling changes for central air conditioners. Goodman urged the Commission to give manufacturers the maximum lead time possible to make the proposed changes. In its view, a longer lead time will allow industry to make the necessary changes while simultaneously conducting product redesigns to meet many new federal energy conservation standards. Specifically, Goodman asked for six months and the issuance of a pre-publication final rule to allow manufacturers to make the necessary changes.

Roof-Top Systems, Manufacturer Names on Labels, Model Numbers, and Retailer Disclosures: The commenters also addressed the Commission's proposals related to manufacturer names on the labels, model numbers, combined roof-top systems, and retailer disclosures.

First, the commenters disagreed on the proposal to give manufacturers flexibility in whether to place their name on the label. Industry members supported this proposal. The Joint Commenters, however, argued the Rule should require the label to bear the manufacturer name. In their view, the name aids consumers in their purchases because many do not see the heating and cooling equipment (and thus the unit's nameplate) until it is installed in their home. In addition, they argued that, though many retailers, installers, and assemblers deal exclusively with a single manufacturer or private labeler, that is not always the case.

Second, the commenters, such as AHRI, generally supported the proposal to allow central air conditioner manufacturers to print multiple model numbers on a single label as long as the models share the same efficiency ratings and capacities. However, the Joint Commenters urged the FTC to consider establishing a maximum limit, either on the number of different model numbers or the amount of space consumed by such numbers, to ensure the label's legibility.

Third, commenters (*e.g.,* Goodman and AHRI) supported the proposal to allow a single label on rooftop units to reflect energy usage for furnace and ACs or HPs for single-packaged air conditioners less than 65,000 Btu/h with gas heat. No commenters opposed the proposal.

Finally, no commenters opposed the proposal to clarify the retailer disclosure provisions in § 305.14.

Discussion: Regional Standards Label for Central Air Conditioners. The Commission issues the final labels as proposed, including the three proposed label categories related to regional standards, but without the "mini-range" for split-system units.[53] In addition, as suggested by AHRI, the final central air conditioner label has a different SEER range for products that qualify for different regions. Specifically, for products that can be sold only in northern states, the low end of the range is 13 SEER. For other products, the low end is 14 SEER. This change will minimize confusion by eliminating comparative information related to models that may not be available for sale in certain regions due to the DOE standards. The Rule requires manufacturers to begin using the revised label nine months after the Commission publishes the amendments.

Consistent with the proposal and contrary to AHRI's recommendation, the final label includes the lowest SEER rating associated with the labeled model but not the model-specific range of ratings. As noted by some commenters, this simplified disclosure is consistent with the ASRAC discussions and recommendations. In addition, in initially issuing labels related to regional standards several years ago, the Commission included the installed range for individual systems to help installers and consumers determine whether an installed system met applicable regional standards. The Commission predicated the disclosure on the assumption that the regional standards would apply to the system's installed efficiency rating. However, that assumption no longer applies because DOE plans to enforce the regional standards based on the lowest rated efficiency rating, rather than the rating of the systems as installed. Accordingly, the "mini-range" on the current label is no longer necessary. The single number will make it easier for installers to determine regional compliance.[54] Also, with the single number, there is no risk that the label will mislead consumers into believing their installed system's efficiency is higher than it actually is. Finally, installers will have a clear incentive to inform consumers about higher efficiency combinations.

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[50] *See* 77 FR at 77868. *American Public Gas Ass'n* v. *DOE,* No. 11–1485 (D.C. Cir. filed Dec. 23, 2011) (DE.#1433580, May 1, 2013); (DE.# 1489805, Apr. 24, 2014).

[51] In addition, the California IOUs urged the FTC to continue to include the EER rating, along with SEER, on the label for central air conditioners because, in their view, EER is a more beneficial annual energy use metric for consumers, especially as utilities move towards peak day pricing.

[52] The Joint Commenters recommended that outdoor units be marked with a "ruggedized label" on or near the nameplate, indicating in what regions of the country, if any, installation of the unit is prohibited. The Joint Commenters argued this approach, agreed upon by the DOE working group, would aid in detecting non-compliant units. Because not all manufacturers certify their products through AHRI, the Joint Commenters asserted that a separate FTC requirement would ensure a level playing field.

[53] DOE issued final enforcement rules for regional standards on July 14, 2016 (81 FR 45387).

Roof-Top Systems, Manufacturer Names on Labels, Model Numbers, and Updates to Retailer Disclosures: Finally, the final amendments contain provisions related to combined roof-top systems, manufacturer names on the labels, model numbers, and retailer disclosures.

First, the final amendments allow a single label to reflect energy usage for "rooftop systems" (*i.e.,* furnace and ACs or HPs for single-packaged air conditioners less than 65,000 Btu/h with gas heat) to reduce the burden and clutter associated with using two separate labels for these products.

Second, the amendments allow manufacturers to include their name on the label at their discretion, which is, as discussed above, consistent with labels for most other covered products. For the reasons detailed in the proposed Rule, these products are routinely sold through contractors in consumers' homes. Therefore, the absence of the manufacturer's name on the label should not confuse consumers.

Third, the final Rule allows multiple model numbers to appear on labels for models that share the same capacity and efficiency ratings. To reduce the likelihood that labels will become crowded with model numbers, the final Rule advises that numbers must be clear and prominent. The Rule has allowed multiple model numbers on appliance labels for decades with no apparent problem.[55] Should the inclusion of multiple model numbers on labels become an issue, the Commission will consider more prescriptive requirements in the future.[56]

Finally, the Commission has updated the retailer disclosure provisions in § 305.14 to clarify that the 2013 amendments now apply.[57]

F. Water Heater Labels

Background: In the 2015 NPRM, the Commission sought comment on modifications to water heater labels in response to a new DOE test procedure (79 FR 40542 (July 11, 2014)).[58] Among other things, the new DOE test creates four categories or "bins," which group models by their "first hour rating," DOE's standard measure of hot water output for these products. The first hour rating, which appears on current EnergyGuide labels, displays the number of gallons of hot water the heater can supply in the first hour. The four new DOE first hour rating bins are: Very small (first hour rating less than 18 gallons), low (first hour rating between 18 and 51 gallons), medium (first hour rating between 51 and 75 gallons), and high (first hour rating greater than 75 gallons). In contrast, the Rule currently groups water heater ranges by the first hour rating in roughly five-gallon increments (*e.g.,* 25–29, 30–34, 35–39 gallons, etc.). The new test procedure also establishes a new energy efficiency metric (uniform energy factor or "UEF").

In anticipation of these changes, the Commission proposed amendments to the water heater label ranges to provide both: (1) Tank capacity information and (2) first hour rating information consistent with the four new DOE categories. Because water heaters are commonly marketed by tank size (*i.e.,* storage volume) and not first hour rating, the Notice asked commenters whether the Rule should group the ranges by tank size, and then further by first hour rating, placing the four DOE water usage bins within such tank size categories. In addition, the Commission proposed to use the term "hourly hot water output" instead of the more technical term "first hour rating." The proposal also contains text explaining the term "hourly hot water output." Under the proposal, the label would continue to display annual energy cost as the primary disclosure, with energy use appearing in the label's secondary information. The Commission did not propose to add an energy efficiency rating (*i.e.,* energy factor) to the label.

Additionally, the Commission announced plans to update the comparability range for water heaters to reflect the new test procedure results and significant efficiency increases driven by the new DOE standards.[59] As a result of the new DOE standards, most, if not all, electric water heaters will include heat pump technology. The Commission, therefore, proposed revising the existing water heater categories to eliminate the separate category for heat pump water heaters, and combining such models into a general category for all electric water heaters. The Commissioned expected this change would simplify the tables and help consumers compare all electric water heaters.[60]

Comments: In general, the commenters agreed that the FTC should amend the water heater label based on significant changes to the DOE test procedure. Despite their general support for changing the label, industry members, as discussed in detail below, raised several concerns with the proposed label, including the "first hour rating" terminology, annual energy use and energy efficiency disclosures, tank size disclosures, the comparability categories, energy factor information, and timing of revised labels. In urging FTC to consider these various issues, industry members asked that the FTC reconsider the sample labels AHRI submitted with its previous comments. In their view, these labels provide clear, concise consumer information while not adversely affecting competition among water heater manufacturers. Specifically, AHRI asserted that its suggested labels clearly identify the new DOE size bins and inform consumers that the labels' comparative information applies only to water heaters within the same bin.[61] Finally, in addition to concerns regarding the proposed label designs, the commenters raised issues about labels for electric instantaneous models and grid-enabled water heaters.

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[54] The 2015 NPRM did not discuss conforming changes to the heat pump labels. Since these products are not subject to DOE's regional standards, the final amendments do not change those labels.

[55] *See* 44 FR 66466 (Nov. 19, 1979).

[56] Contrary to commenter suggestions, the final Rule does not include a requirement for an all-weather disclosure on the nameplate. Without additional information and comment, the Commission lacks sufficient information to do so. It may consider such requirements at a later date.

[57] 78 FR 8362.

[58] DOE also published a proposed rule in April 2015 related to a "conversion factor" for use under the new test procedure (80 FR 20116 (April 14, 2015)). In that Notice, DOE proposed to continue to allow manufacturers to determine costs under existing testing requirements and thus create "a transition period for FTC to pursue a rulemaking to determine whether changes are needed to the water heater EnergyGuide label due to changes in the water heater test procedure." 80 FR at 20138.

[59] Given the absence of model energy data from the new test procedure, the proposed amendatory language did not include proposed tables for revised cost ranges.

[60] The Commission also proposed to update the definition of "water heater" so that it is consistent with clarifying changes to that term recently proposed by DOE. 79 FR 40541 (July 11, 2014).

First hour rating. Several industry commenters (*e.g.,* A.O. Smith, AHRI, and BWC) objected to the proposed label's use of the term "hourly hot water output" instead of "first hour rating." In their opinion, this undefined term incorrectly implies that a model will deliver the indicated hot water volume on an hour-to-hour basis. The commenters explained that the first hour rating only measures the first hour's water delivery and does not necessarily apply to subsequent operating hours.[62] Instead of creating a new term, most industry commenters recommended the Commission retain the "first hour rating" because it is a commonly accepted term employed for decades in DOE standards, on FTC labels, and in building codes and sizing guides.[63] Some commenters offered specific alternatives. For instance, GEA suggested the term "Hot Water Output" rather than "Hourly Hot Water Output" along with a clarification that the term refers to "How much hot water you get in 1st hour." Rheem suggested terms such as "usage category" or "hot water usage capability." Finally, Rheem and AHRI recommended the usage category scale include not only the first hour rating category (*e.g.,* very small, low), but also the actual rating number (*e.g.,* 70 gallons) to provide more detailed information to help consumers pick a model that meets their hot water demands.

Annual Energy Use in Therms and Energy Factor: The commenters offered different views on including annual energy use and energy factor ratings on the label. Several industry commenters (*e.g.,* AHRI, A.O. Smith, Rheem and BWC) recommended excluding the estimated annual energy use in therms from the label because, in their view, most consumers do not find that information useful.[64] AHRI explained that annual energy cost and therms are proportional and that users who need such information can easily calculate "annual therms" from the annual energy cost. These commenters suggested that other disclosures would be more useful, though they did not provide examples. GEA disagreed, arguing that the label should retain the estimated annual energy use disclosure because it provides energy use information to consumers without forcing them to convert those figures from the cost disclosure.

The California IOUs, which did not address the annual energy use issue, suggested that the label display the model's efficiency rating (*i.e.,* energy factor), in addition to its energy consumption, because it is the best indicator of a water heater's efficiency. They explained that energy factor helps consumers determine whether a model qualifies for utility rebates and serves as the applicable metric for gauging compliance with DOE standards and state building codes.[65]

Tank Size: The commenters also took issue with including information about tank size on the proposed label. First, several commenters (*e.g.,* AHRI and A.O. Smith) objected to the term "tank size" and urged the Commission to use the standard industry term, "storage vessel capacity," which nationally-recognized safety standards already require on the product's rating plate.[66] Rheem agreed that the term "tank size" should not appear on the label but, should the Commission decide to include it, suggested alternative terms such as "rated storage volume" or "rated storage capacity" to better reflect the terms used by DOE and the water heater industry.[67]

Comparability Categories and Tank Size: Similarly, industry commenters (including A.O. Smith, AHRI, and BWC) argued the label should not divide comparability categories by storage vessel capacity. Rheem explained that first hour rating, which is a function of both volume and output, better describes the amount of hot water consumers can expect. In addition, Rheem noted that the four DOE first hour rating categories (*i.e.,* very small, low, medium, or high) provide appropriate comparative information regardless of storage tank capacity. Accordingly, industry commenters asserted that the proposed division of categories by storage capacity is unnecessary, overly complicated, and confusing to consumers. Instead, they recommended that the comparability ranges reflect first hour rating categories only.

Combining range information for electric water heaters and heat pump water heaters: The commenters (including A.O. Smith, BWC, Rheem, AHRI, and the Joint Commenters) supported the proposal to combine the comparability range information for electric and heat pump water heaters. Rheem explained that this will allow consumers to gauge operating cost differences between the two technologies and weigh them against initial purchase prices. The Joint Commenters noted that this proposal reflects the reality that these products compete with each other for the same applications.[68] Finally, AHRI urged the Commission to clarify that the Rule's combination of existing categories for electric water heaters and heat pumps applies only to storage water heaters.

Need For a Transitional Label: The commenters offered different views about the need for additional label information about the DOE test procedure change. GEA argued that the FTC should highlight the transition to aid consumers in their comparison shopping. It suggested using a modified label similar to the transitional labels employed for refrigerators and clothes washers during the recent DOE test procedure change for those products. AHRI and A.O. Smith disagreed, explaining that the proposed AHRI label provides adequate information regarding the transition by defining the new first hour categories ("bins") and clearly explaining how consumers should use that information. A.O. Smith cautioned that transitional advisory language would be overly confusing and soon become unnecessary. Instead, AHRI and A.O. Smith recommended the Commission separately educate consumers on the transition between test procedures, using sources such as the FTC Web site.

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[61] AHRI noted two minor errors on the proposed label related to the names of the DOE first hour rating categories and the description of the term "hourly hot water output." The Commission addresses both of these issues in the final Rule.

[62] A.O. Smith also argued that the "Hourly Hot Water Output" term may conflict with applicable DOE test procedures. *See* 42 U.S.C. 6293(b).

[63] Rheem noted that in DOE regulations "first hour rating" is defined as "an estimate of the maximum volume of hot water that a storage-type water heater can supply within an hour that begins with the water heater fully heated (*i.e.,* with all thermostats satisfied). It is a function of both the storage volume and the recovery rate." 10 CFR 430, Subpart B, Appendix E.

[64] AHRI and Rheem agreed that the "Estimated Yearly Energy Cost" range chart on the label be larger and more prominent than the first hour rating category segmented bar figure, as depicted in the proposed FTC EnergyGuide label.

[65] In addition, for water heaters that exceed the minimum federally required energy factor, the California IOUs recommended FTC include the following language: "This water heater's energy factor is [insert percentage] percent better than the federal minimum standard. Contact your local utility to find out if this product qualifies for a rebate."

[66] *See* ANSI Z21.10.1–2014/CSA 4.1–2014, "Gas water heaters, volume I, storage water heaters with input ratings of 75,000 Btu per hour or less." AHRI and A.O. Smith stressed that, if the Commission decides to require such information on the label, the term and number displayed should match the water heater's rating plate to ensure consistency between the labels on the water heater.

[67] Rheem explained that the "actual storage water heater tank size is comprised of dimensional measurements as well as tank volume, so a volume measurement in gallons should not be the only measurement describing 'Tank Size.'"

[68] AHRI noted that electric resistance models will cluster at the high end of the energy cost range while most heat pump water heaters will appear at the lower end, with few, if any models, in between.

Gallons per hour for instantaneous water heaters: The current instantaneous water heater label provides capacity in gallons per minute (gpm). The California IOUs recommended the instantaneous water heater label include the model's hourly hot water output, as well as the same ranges for hourly hot water output as the storage water heaters (very low, small, medium, and high) for consistency. The California IOUs argued that such a change would allow consumers to better compare the two technologies.

Timing: AHRI asserted that the information necessary to develop amended water heater labels is not yet available. In particular, AHRI explained that there is no industry data from the new test procedure to generate new comparability ranges. In addition, AHRI urged the Commission to coordinate, to the fullest extent possible, the timing of new labeling requirements with DOE's implementation of its revised test procedure. Specifically, industry members (Rheem and AHRI) urged FTC to coordinate with DOE to ensure the new label requirements coincide with the new DOE ratings. AHRI noted that industry members are not yet using the new UEF metrics from the revised test procedure to determine compliance with the minimum efficiency standards because DOE has not issued a conversion factor. The commenters suggested the Commission use the new data to determine new comparability ranges once it becomes available. AHRI indicated that the UEF implementation date has yet to be determined and will be decided with DOE's publication of the final UEF conversion factor rule.

Grid-Enabled Residential Electric Water Heaters: Commenters also requested that the Commission consider labeling for thermal storage grid-enabled residential electric water heaters. Utilities can operate these models remotely to manage overall electricity load. Rheem explained that these models, which have storage volumes greater than 75 gallons, have several unique aspects such as an activation lock and key and communications modules. In addition, Rheem explained that these models are not limited to residential use, and electronic utility companies use these models as thermal storage batteries. Given these unusual characteristics, Rheem argued that the EnergyGuide labels will not adequately compare these models to conventional models. Accordingly, it urged the Commission to exempt grid enabled water heaters from EnergyGuide labeling requirements. AHRI disagreed. It explained that DOE regulations already require a specific disclosure addressing the appropriate use of these water heaters (*see* 10 CFR 430.2), which could appear on the FTC EnergyGuide label, or as a separate label.

Electric instantaneous water heaters: AHRI also recommended the Commission propose labels for residential electric instantaneous water heaters, which have been excluded from the DOE test procedure in the past. The revised DOE water heater efficiency test procedure now includes a method to measure these models' energy use.

Discussion: In the final amendments, the Commission has revised the water heater label to include new information consistent with the revised DOE test procedure. Manufacturers will have nine months to begin using the label and must base the information on the new DOE test procedure. Consistent with the proposed label, the new label depicts storage water heater capacity using DOE's new output categories (or bins). The final Rule also includes new ranges for these bins derived from DOE data developed as part of its regulatory proceeding. As proposed and supported in the comments, the final Rule combines the electric water heaters and heat pump water heaters for comparison purposes.[69]

In response to the comments, the Commission has made several revisions to the proposed label. First, the final label uses the conventional term "first hour rating" instead of "hourly hot water output." We agree with commenters that the latter term may suggest that the rating applies on an hour-to-hour basis, when, in reality, it only measures output in the first hour. To address this issue, the final label states that "first hour rating" describes "How much hot water you get in the first hour." Consistent with AHRI's suggestions, the model's first hour rating in gallons appears on the scale next to the model's first hour rating bin (*i.e.*, very small, low, medium, and high) to allow for better product comparisons. Second, the label does not sort comparability ranges by tank size (*i.e.*, storage capacity) as proposed, but instead limits those ranges to the four DOE water output bins (very small, low, medium, and high). As explained by the commenters, "first hour rating" best describes the hot water amount consumers can expect the product to deliver. Therefore, including tank size in the comparability ranges is unnecessary and potentially confusing. However, the final label includes a storage capacity disclosure near the top of the label. In response to commenters' concerns about terminology, the final label uses the term "tank size (storage capacity)," to ensure consistency with commonly used wording. Finally, the label continues to include annual energy use to provide consumers with this additional comparative information.[70]

The final label, however, does not include several items proposed by commenters. First, it does not include text regarding the new DOE test procedure. The Commission agrees with other commenters that the final label appropriately conveys information related to the test procedure transition. Specifically, the label clearly defines the new categories ("bins") and explains how consumers should use that information, making additional explanatory text unnecessary. Second, the label does not contain a statement explaining how the labeled model compares to the applicable DOE standard. Such information would clutter the label and be potentially confusing. Finally, the labels for instantaneous water heaters continue to convey capacity in gallons per minute. As commenters suggest, a "gallons per hour" rating on an instantaneous model may confuse or mislead consumers. Such a disclosure is not equivalent to the "first hour rating" for storage models. "Gallons per hour" represents a continuous flow rate that the model will continuously deliver, whereas "first hour rating" reflects hot water volume delivered in the first hour.[71]

Finally, the Commission will consider seeking comment on special labeling for grid-enabled residential electric water heaters in the future. In the meantime, since grid-enabled water heaters meet existing definitions for water heaters, and the Rule contains applicable comparison ranges, manufacturers should label these models as they do any other storage water heater. The Commission will also formally propose labels for instantaneous electric-water heaters in a later notice. These products cannot be labeled under the current Rule because they do not fall into an existing labeling category, and no range of comparability exists.

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[69] Heat pump water heaters now fall under the comparability range information for electric water heaters in Appendix D2.

[70] The revised label does not include an energy factor disclosure, as suggested by some commenters. As the Commission explained in a 2015 Notice, it is unclear whether consumers are familiar with the term. In addition, such information is available from DOE's Compliance Certification Management System (CCMS). 80 FR 67285, 67293 (Nov. 2, 2015).

[71] The FTC staff will provide a sample label template for instantaneous water heaters on the FTC Web site for use by manufacturers.

III. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through May 31, 2017 (OMB Control No. 3084–0069). The amendments make changes in the Rule's labeling requirements that will increase the PRA burden as detailed below.[72] Accordingly, the Commission is seeking OMB clearance specific to the Rule amendments.

Reporting Requirements (label images): The amendments require manufacturers to furnish (as part of their normal FTC reporting) links to images of their EnergyGuide labels. Given approximately 15,000 total models at an estimated 1 minute per model, this requirement will entail a burden of 250 hours. Assuming further that these reporting requirements will be implemented by data entry workers at an hourly wage rate of $15.79 per hour,[73] the associated labor cost for reporting would be approximately $3,948 per year. Any non-labor costs associated with the reporting amendments are likely to be minimal.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[74]

The Commission does not anticipate that the final amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic impact of implementing the amendments will be significant. The Commission plans to provide businesses with ample time to implement the requirements. In addition, the Commission does not expect that the requirements specified in the final amendments will have a significant impact on affected entities.

Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission initiated this rulemaking to reduce the Rule's reporting burdens, increase the availability of energy labels to consumers while minimizing burdens on industry, and generally improve existing requirements.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. Comments that involve impacts on all entities are discussed above.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, the standards for various affected entities are as follows: refrigerator manufacturers—up to 1,000 employees; other appliance manufacturers—up to 500 employees. Based on general knowledge of the this market, the FTC staff estimates that fewer than 50 entities subject to the Rule's requirements qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the changes will involve some burdens on affected entities. However, the amendments should not have a significant impact on a substantial number of small entities. Manufacturers will have to make changes to their reporting process. However, the Commission has provided them with ample time to incorporate the changes into their normal Web site updates. In addition, as detailed in the Paperwork Reduction Act analysis, the changes will not be significant. There should be no capital costs associated with the amendments. As estimated above, the Rule imposes new requirements on fewer than 50 small businesses (appliance and electronics manufacturers. The changes are likely to be made by data entry specialists.

E. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In particular, the Commission sought comments on whether it should delay the Rule's effective date to provide additional time for small business compliance and whether to reduce the amount of information catalog sellers must provide. However, to minimize the impacts on manufacturers, the Commission has set the effective date for most of the new requirements at one year after publication of this document in the **Federal Register** and has also modified its proposal to reduce the burden associated with that reporting by providing manufacturers with different options for reporting their label images (*e.g.*, links to pdf files, Web sites, etc.).

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

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[72] As indicated in the NPRM (80 FR 67363, n. 54), several proposed labeling changes, including changes to dual mode refrigerators, heating and cooling equipment, consolidated comparability ranges for refrigerators, ceiling fan labels, and water heaters should impose no additional burden beyond existing estimates because such changes either impose no or *de minimis* additional burdens, or manufacturers should be able to incorporate the proposed changes into their normally scheduled package or label revisions without incurring additional burdens beyond those already accounted for. The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

[73] This is an increase from the labor cost estimate in the NPRM, attributable to an intervening annual release from the Bureau of Labor Statistics. Within it, the mean hourly wage for "Data entry and information processing workers" rose from the previously shown amount of $15.48 to $15.79. *See http://www.bls.gov/news.release/ocwage.t01.htm* "Occupational Employment and Wages—May 2015," Bureau of Labor Statistics, U.S. Department of Labor, released March 30, 2016, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2015").

[74] 5 U.S.C. 603–605.

Final Rule

For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (“ENERGY LABELING RULE”)

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.3, revise paragraph (x) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(x) Ceiling fan means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades, excluding large-diameter and high-speed small diameter fans as defined in appendix U of subpart B of 10 CFR part 430. The requirements of this part are otherwise limited to those ceiling fans for which the Department of Energy has adopted and published test procedures for measuring energy usage.

* * * * *

■ 3. Amend § 305.7 by revising paragraphs (a), (b), and (d) to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix A to 10 CFR part 430, subpart B.

(b) *Freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix B to 10 CFR part 430, subpart B.

* * * * *

(d) *Water heaters.* The capacity shall be the rated storage volume and first hour rating (for storage-type models), and gallons per minute (for instantaneous-type models), as determined according to appendix E to 10 CFR part 430, subpart B.

* * * * *

■ 4. In § 305.8:

■ a. Remove the term “at high speed” wherever it appears; and

■ b. Add paragraph (a)(5) to read as follows:

§ 305.8 Submission of data.

(a) * * *

(5) After September 15, 2017, manufacturers must begin submitting a Web site address for the online EnergyGuide labels covered by § 305.6(a) in new model and annual reports required by this section. Manufacturers may accomplish this by either submitting a specific link to a URL for each label, a link to a PDF download for each label, or a link to a Web site that takes users directly to a searchable database of the covered labels from which the label image or download may be accessed using the model number as certified to DOE pursuant to 10 CFR part 429 and the model number advertised in product literature. Such label information must be submitted either at the time the model is certified to DOE pursuant to 10 CFR part 429 or at some time on or before the annual report date immediately following such certification. In lieu of submitting the required information to the Commission, manufacturers may submit such information to the Department of Energy via the CCMS at *https://regulations.doe.gov/ccms* as provided by 10 CFR 429.12. The requirements in this paragraph do not apply to Lighting Facts labels.

* * * * *

■ 5. Amend § 305.11 by revising paragraphs (a) and (f) to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

(a) *Layout.* All energy labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, pool heaters, and room air conditioners shall use one size, similar colors, and typefaces with consistent positioning of headline, copy, and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5¼ inches and 5½ inches (13.34 cm. and 13.97 cm.); length must be between 7⅜ inches (18.73 cm.) and 7⅝ (19.37 cm.). Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basis layout. All positioning, spacing, type sizes, and line widths should be similar to and consistent with the prototype and sample labels in appendix L to this part.

* * * * *

(f) *Label content.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part, are standard for all labels.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with § 305.7. For refrigerators, refrigerator-freezers, and freezers, the capacity provided on the label shall be the model's total refrigerated volume (VT) as determined in accordance with § 305.7 and the model description must be consistent with the categories described in Appendices A and B to this part. Capacity for storage water heaters shall be presented in both rated storage volume (“tank size (storage capacity)”) and first hour rating as indicated on the sample label in appendix L to this part.

(5) Unless otherwise indicated in this paragraph, estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, and water heaters are as determined in accordance with §§ 305.5 and 305.10. Thermal efficiencies for pool heaters are as determined in accordance with § 305.5. Labels for clothes washers and dishwashers must disclose estimated annual operating cost for both electricity and natural gas as illustrated in the sample labels in appendix L to this part. Labels for dual-mode refrigerator-freezers that can operate as either a refrigerator or a freezer must reflect the estimated energy cost of the model's most energy intensive configuration.

(6) Unless otherwise indicated in this paragraph, ranges of comparability for estimated annual operating costs or thermal efficiencies, as applicable, are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs or thermal efficiencies, as applicable.

(8) Labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, and water heaters must contain the model's estimated annual energy consumption as determined in accordance with

§ 305.5 and as indicated on the sample labels in appendix L. Labels for room air conditioners, and pool heaters must contain the model's energy efficiency rating or thermal efficiency, as applicable, as determined in accordance with § 305.5 and as indicated on the sample labels in appendix L to this part.

(9) Labels must contain a statement as illustrated in the prototype labels in appendix L and specified as follows by product type:

(i) Labels for refrigerators and refrigerator-freezers must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the blanks with the appropriate year and energy cost figures):

Your cost will depend on your utility rates and use.

Both cost ranges based on models of similar size capacity.

[Insert statement required by § 305.11(f)(9)(iii)].

Estimated energy cost is based on a national average electricity cost of ____ cents per kWh.

ftc.gov/energy.

(ii) For refrigerators, refrigerator-freezers, and freezers and clothes washers the label shall contain the text and graphics illustrated in sample labels 1 and 2 of appendix L, including the statement:

Compare ONLY to other labels with yellow numbers.

Labels with yellow numbers are based on the same test procedures.

(iii) For refrigerators and refrigerator-freezers, the following sentence shall be included as part of the statement required by paragraph (f)(9)(i) of this section:

(A) For models covered under appendix A1, the sentence shall read:

Models with similar features have automatic defrost and no freezer.

(B) For models covered under appendix A2, the sentence shall read:

Models with similar features have manual defrost.

(C) For models covered under appendix A3, the sentence shall read:

Models with similar features have partial automatic defrost.

(D) For models covered under appendix A4, the sentence shall read:

Models with similar features have automatic defrost, top-mounted freezer, and no through-the-door ice.

(E) For models covered under appendix A5, the sentence shall read:

Models with similar features have automatic defrost, side-mounted freezer, and no through-the-door ice.

(F) For models covered under appendix A6, the sentence shall read:

Models with similar features have automatic defrost, bottom-mounted freezer, and no through-the-door ice.

(G) For models covered under appendix A7, the sentence shall read:

Models with similar features have automatic defrost, bottom-mounted freezer and through-the-door ice.

(H) For models covered under appendix A8, the sentence shall read:

Models with similar features have automatic defrost, side-mounted freezer, and through-the-door ice.

(iv) Labels for freezers must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the blanks with the appropriate year and energy cost figures):

Your cost will depend on your utility rates and use.

[Insert statement required by § 305.11(f)(10)(v).]

Estimated energy cost is based on a national average electricity cost of ____ cents per kWh.

ftc.gov/energy.

(v) For freezers, the following sentence shall be included as part of the statement required by paragraph (f)(9)(iv) of this section:

(A) For models covered under appendix B1, the sentence shall read:

Cost range based only on upright freezer models of similar capacity with manual defrost.

(B) For models covered under appendix B2, the sentence shall read:

Cost range based only on upright freezer models of similar capacity with automatic defrost.

(C) For models covered under appendix B3, the sentence shall read:

Cost range based only on chest and other freezer models of similar capacity.

(vi) For room air conditioners covered under appendix E, the statement will read as follows (fill in the blanks with the appropriate model type, year, energy type, and energy cost figure):

Your costs will depend on your utility rates and use.

Cost range based only on models [of similar capacity without reverse cycle and with louvered sides; of similar capacity without reverse cycle and without louvered sides; with reverse cycle and with louvered sides; or with reverse cycle and without louvered sides].

Estimated annual energy cost is based on a national average electricity cost of ____cents per kWh and a seasonal use of 8 hours use per day over a 3 month period.

For more information, visit *www.ftc.gov/energy.*

(vii) For water heaters covered by Appendices D1, D2, and D3, the statement will read as follows (fill in the blanks with the appropriate fuel type, year, and energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on models fueled by [natural gas, oil, propane, or electricity] with a [very small, low, medium, or large] first hour rating ([fewer than 18 gallons, 18–50.9 gallons, 51–74.9 gallons, or greater than 75 gallons]).

Estimated energy cost is based on a national average [electricity, natural gas, propane, or oil] cost of [____cents per kWh or $____per therm or gallon].

Estimated yearly energy use: ____ [kWh or therms].

ftc.gov/energy.

(viii) For instantaneous water heaters (Appendix D4), the statement will read as follows (fill in the blanks with the appropriate model type, the operating cost, the year, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on models fueled by natural gas with a [very small, low, medium, or large] gallons per minute rating ([0 to 1.6, 1.7 to 2.7, 2.8 to 4.0, or greater than 4.0]).

Estimated energy cost is based on a national average [natural gas, or propane] cost of [____cents per kWh or $____per therm or gallon].

Estimated yearly energy use: ____ [kWh or therms].

ftc.gov/energy.

(ix) For dishwashers covered by appendices C1 and C2, the statement will read as follows (fill in the blanks with the appropriate appliance type, the energy cost, the number of loads per week, the year, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated energy cost is based on 4 washloads a week, and a national average electricity cost of __cents per kWh and natural gas cost of $____per therm.

ftc.gov/energy.

(x) For clothes washers covered by appendices F1 and F2, the statement will read as follows (fill in the blanks with the appropriate appliance type, the energy cost, the number of loads per week, the year, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated energy cost is based on six wash loads a week and a national average electricity cost of __cents per kWh and natural gas cost of $____per therm.

ftc.gov/energy.

(xi) For pool heaters covered under appendices J1 and J2, the statement will read as follows:

Efficiency range based only on models fueled by [natural gas or oil].

For more information, visit *www.ftc.gov/energy.*

* * * * *

■ 6. Amend § 305.12 by revising paragraphs (f)(2) and (3), adding paragraph (f)(14), and revising paragraph (g) to read as follows:

§ 305.12 Labeling for central air conditioners, heat pumps, and furnaces.

* * * * *

(f) * * *

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) The model's basic model number. The label may include multiple model numbers on a single label for models as long as the models share the same efficiency ratings and capacities and the presentation of such information is clear and prominent.

* * * * *

(14) Manufacturers of models that qualify as both furnaces and central air conditioners or heat pumps under DOE requirements may combine the disclosures required by this section on one label for models that meet all applicable DOE regional efficiency standards.

(g) *Content of central air conditioner labels: Content of labels for central air conditioners and heat pumps.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) The model's basic model number. The label may include multiple model numbers on a single label for models as long as the models share the same efficiency ratings and capacities and the presentation of such information is clear and prominent.

(4) The model's capacity. Inclusion of capacity is optional at the discretion of the manufacturer or private labeler for all models except split-system labels, which may not disclose capacity.

(5) The seasonal energy efficiency ratio (SEER) for the cooling function of central air conditioners as determined in accordance with § 305.5. For the heating function, the heating seasonal performance factor (HSPF) shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with § 305.5. In addition, as illustrated in the sample labels in appendix L to this part, the ratings for any split-system air conditioner condenser evaporator coil combinations shall be the minimum rating of all condenser-evaporator coil combinations certified to the Department of Energy pursuant to 10 CFR part 430. The ratings for any split-system heat pump condenser-evaporator coil combinations shall include the low and high ratings of all condenser-evaporator coil combinations certified to the Department of Energy pursuant to 10 CFR part 430.

(6)(i) Each cooling-only central air conditioner label shall contain a range of comparability consisting of the lowest and highest SEER for all cooling-only central air conditioners consistent with sample label 7A in appendix L to this part.

(ii) Each heat pump label, except as noted in paragraph (g)(6)(iii) of this section, shall contain two ranges of comparability. The first range shall consist of the lowest and highest seasonal energy efficiency ratios for the cooling side of all heat pumps consistent with sample label 8 in appendix L to this part. The second range shall consist of the lowest and highest heating seasonal performance factors for the heating side of all heat pumps consistent with sample label 8 in appendix L to this part.

(iii) Each heating-only heat pump label shall contain a range of comparability consisting of the lowest and highest heating seasonal performance factors for all heating-only heat pumps following the format of sample label 8 in appendix L to this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest efficiency ratings forming the scale.

(8) The following statement shall appear on the label in bold print as indicated in the sample labels in appendix L to this part.

For energy cost info, visit *productinfo.energy.gov.*

(9) All labels on split-system condenser units must contain one of the following three statements:

(i) For labels disclosing only the seasonal energy efficiency ratio for cooling, the statement should read:

* Your air conditioner's efficiency rating may be better depending on the coil your contractor installs.

(ii) For labels disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This system's efficiency ratings depend on the coil your contractor installs with this unit. The heating efficiency rating varies slightly in different geographic regions. Ask your contractor for details.

(iii) For labels disclosing only the heating seasonal performance factor for heating, the statement should read:

This system's efficiency rating depends on the coil your contractor installs with this unit. The efficiency rating varies slightly in different geographic regions. Ask your contractor for details.

(10) The following statement shall appear at the top of the label as illustrated in the sample labels in appendix L of this part:

Federal law prohibits removal of this label before consumer purchase.

(11) For any single-package air conditioner with a minimum Energy Efficiency Ratio (EER) of at least 11.0, any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and minimum efficiency ratings of at least 14 SEER and 11.7 EER, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of at least 14 SEER and 12.2 EER, the label must contain the following regional standards information:

(i) A statement that reads:

Notice Federal law allows this unit to be installed in all U.S. states and territories.

(ii) For split systems, a statement that reads:

Energy Efficiency Ratio (EER): The installed system's minimum EER is ____.

(iii) For single-package air conditioners, a statement that reads:

Energy Efficiency Ratio (EER): This model's EER is [____].

(12) For any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and minimum efficiency ratings of at least 14 SEER but lower than 11.7 EER, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of at least 14 SEER but lower than 12.2 EER, the label must contain the following regional standards information.

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE., NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories. Federal law prohibits installation of this unit in other states.

(ii) A map and accompanying text as illustrated in the sample label 7A in appendix L.

(iii) A statement that reads:

Energy Efficiency Ratio (EER): The installed system's minimum EER is ____.

(13) For any split system central air conditioner with a minimum rated efficiency rating less than 14 SEER, the label must contain the following regional standards information:

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AK, CO, CT, ID, IL, IA, IN, KS, MA, ME, MI, MN, MO, MT, ND, NE., NH, NJ, NY, OH, OR, PA, RI, SD, UT, VT, WA, WV, WI, WY, and U.S. Territories. Federal law prohibits installation of this unit in other states.

(ii) A map and accompanying text as illustrated in the sample label 8 in appendix L.

(iii) A statement that reads:

Energy Efficiency Ratio (EER): The installed system's minimum EER is __.

(14) For any single-package air conditioner with a minimum EER below 11.0, the label must contain the following regional standards information consistent with sample label 7A in appendix L to this part:

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE., NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories. Federal law prohibits installation of this unit in other states.

(ii) A map and accompanying text as illustrated in the sample label 7A in appendix L.

(15) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the label for certified products in a location consistent with the sample labels in appendix L to this part. The logo must be no larger than 1 inch by 3 inches in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 7. Revise § 305.13(a) to read as follows:

§ 305.13 Labeling for ceiling fans.

(a) *Ceiling fans*—(1) *Content.* Any covered product that is a ceiling fan, except for models 84 inches or greater in diameter and high-speed small diameter fans as defined in 10 CFR part 430, shall be labeled clearly and conspicuously on the package's principal display panel with the following information on the label consistent with the sample label in appendix L to this part:

(i) Headlines, including the title "EnergyGuide," and text as illustrated in the sample label in appendix L to this part;

(ii) The product's estimated yearly energy cost based on 6.4 hours use per day and 12 cents per kWh;

(iii) The product's airflow expressed in cubic feet per minute and determined pursuant to § 305.5;

(iv) The product's energy use expressed in watts and determined pursuant to § 305.5 as indicated in the sample label in appendix L of this part;

(v) The statement "Based on 12 cents per kWh and 6.4 hours use per day";

(vi) The statement "Your cost depends on rates and use";

(vii) The statement "All estimates based on typical use, excluding lights";

(viii) The statement "The higher the airflow, the more air the fan will move";

(ix) The statement "Airflow Efficiency: ____Cubic Feet Per Minute Per Watt";

(x) The address *ftc.gov/energy;*

(xi) For fans less than 19 inches in diameter, the label shall display a cost range of $10 to $50 along with the statement underneath the range "Cost Range of Similar Models (18″ or smaller)";

(xii) For fans from 19 or more inches and less than 84 inches in diameter, the label shall display a cost range of $3 to $34 along with the statement underneath the range "Cost Range of Similar Models (19″–83)".

(xiii) Placement of the labeled product on the scale proportionate to the lowest and highest estimated annual energy costs as illustrated in the Sample Labels in appendix L. When the estimated annual energy cost of a given model falls outside the limits of the current range for that product, the manufacturer shall place the product at the end of the range closest to the model's energy cost.

(xiv) The ENERGY STAR logo as illustrated on the ceiling fan label illustration in Appendix L for qualified products, if desired by the manufacturer. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

(2) *Label size, color, and text font.* The label shall be four inches wide and three inches high. The label colors shall be black text on a process yellow or other neutral contrasting background. The text font shall be Arial or another equivalent font. The label's text size, format, content, and the order of the required disclosures shall be consistent with the ceiling fan label illustration of appendix L of this part.

(3) *Placement.* The ceiling fan label shall be printed on or affixed to the principal display panel of the product's packaging.

(4) *Additional information.* No marks or information other than that specified in this part shall appear on this label, except a model name, number, or similar identifying information.

(5) *Labeling for "multi-mount" fans.* For "multi-mount" fan models that can be installed either extended from the ceiling or flush with the ceiling, the label content must reflect the lowest efficiency (cubic feet per watt) configuration. Manufacturers may

provide a second label depicting the efficiency at the other configuration.

* * * * *

■ 8. Revise § 305.14 to read as follows:

§ 305.14 Energy information disclosures for heating and cooling equipment.

The following provisions apply to any covered central air conditioner, heat pump, or furnace.

(a) *Manufacturer duty to provide labels.* For any covered central air conditioner, heat pump, or furnace model that a manufacturer distributes in commerce, the manufacturer must make a copy of the EnergyGuide label available on a publicly accessible Web site in a manner that allows catalog sellers and consumers to hyperlink to the label or download it for their use. The labels must remain on the Web site for six months after the manufacturer ceases the model's production.

(b) *Distribution.* (1) Manufacturers and private labelers must provide to distributors and retailers, including assemblers, EnergyGuide labels for covered central air conditioners, heat pumps, and furnaces (including boilers) they sell to them. The label may be provided in paper or electronic form (including Internet-based access). Distributors must give this information to retailers, including assemblers, they supply.

(2) Retailers, including assemblers, who sell covered central air conditioners, heat pumps, and furnaces (including boilers) to consumers must show the labels for the products they offer to customers and let them read the labels before the customers agree to purchase the product. For example, the retailer may display labeled units in their store or direct consumers to the labels in a binder or computer at a counter or service desk.

(3) Retailers, including installers and assemblers, who negotiate or make sales at a place other than their regular places of business, including sales over the telephone or through electronic communications, must show the labels for the products they offer to customers and let them read the labels before the customers agree to purchase the product. If the labels are on a Web site, retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business, may choose to provide customers with instructions to access such labels in lieu of showing them a paper version of the information. Retailers who choose to use the Internet for the required label disclosures must provide customers the opportunity to read such information prior to sale of the product.

(c) *Oil furnace labels.* If an installer installs an oil furnace with an input capacity different from that set by the manufacturer and the manufacturer identifies alternative capacities on the label, the installer must permanently mark the appropriate box on the EnergyGuide label displaying the installed input capacity and the associated AFUE as illustrated in Sample Labels in appendix L to this part.

■ 9. Revise Appendixes A1 through A8 to Part 305 to read as follows:

Appendix A1 to Part 305—Refrigerators With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$18	$39
10.5 to 12.4	30	34
12.5 to 14.4	34	36
14.5 to 16.4	(*)	(*)
16.5 to 18.4	34	40
18.5 to 20.4	40	41
20.5 to 22.4	37	48
22.5 to 24.4	45	50
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data.

Appendix A2 to Part 305—Refrigerators and Refrigerator-Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$24	$41
10.5 to 12.4	(*)	(*)
12.5 to 14.4	30	30
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data.

Appendix A3 to Part 305—Refrigerator-Freezers With Partial Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$25	$44
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data.

Appendix A4 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$36	$53
10.5 to 12.4	37	51
12.5 to 14.4	40	55
14.5 to 16.4	40	57
16.5 to 18.4	43	59
18.5 to 20.4	45	62
20.5 to 22.4	46	63
22.5 to 24.4	56	66
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data.

Appendix A5 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$25	$70
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	37	37
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	63	86
22.5 to 24.4	67	90
24.5 to 26.4	69	93
26.5 to 28.4	85	96
28.5 and over	86	101

(*) No data.

Appendix A6 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$19	$62
10.5 to 12.4	38	63
12.5 to 14.4	49	65
14.5 to 16.4	52	72
16.5 to 18.4	54	73
18.5 to 20.4	54	75
20.5 to 22.4	58	79
22.5 to 24.4	71	83
24.5 to 26.4	64	81
26.5 to 28.4	77	84
28.5 and over	78	86

Appendix A7 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer With Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	$77	$83
20.5 to 22.4	79	87
22.5 to 24.4	80	91
24.5 to 26.4	76	93
26.5 to 28.4	74	95
28.5 and over	78	103

(*) No data.

Appendix A8 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer With Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	$78	$78
20.5 to 22.4	72	94
22.5 to 24.4	81	98
24.5 to 26.4	73	99
26.5 to 28.4	89	104
28.5 and over	82	107

(*) No data.

■ 10. Add Appendix A9 to Part 305 to read as follows:

Appendix A9 to Part 305—All Refrigerators and Refrigerator-Freezers

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$18	$70
10.5 to 12.4	30	63
12.5 to 14.4	30	65
14.5 to 16.4	37	72
16.5 to 18.4	34	73
18.5 to 20.4	40	83
20.5 to 22.4	37	94
22.5 to 24.4	45	98
24.5 to 26.4	64	99
26.5 to 28.4	74	104
28.5 and over	78	107

■ 11. Revise Appendixes B1 through B3 to Part 305 to read as follows:

Appendix B1 to Part 305—Upright Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$26	$36
5.5 to 7.4	37	38
7.5 to 9.4	30	30
9.5 to 11.4	31	31
11.5 to 13.4	38	38
13.5 to 15.4	40	40
15.5 to 17.4	43	43
17.5 to 19.4	(*)	(*)
19.5 to 21.4	48	48
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
29.5 and over	(*)	(*)

(*) No data.

Appendix B2 To Part 305—Upright Freezers With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$32	$32
5.5 to 7.4	(*)	(*)
7.5 to 9.4	53	59
9.5 to 11.4	59	59
11.5 to 13.4	57	67
13.5 to 15.4	47	73
15.5 to 17.4	52	74
17.5 to 19.4	54	71
19.5 to 21.4	57	76
21.5 to 23.4	81	87
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

(*) No data.

Appendix B3 To Part 305—Chest Freezers And All Other Freezers

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$16	$27
5.5 to 7.4	24	30
7.5 to 9.4	23	31
9.5 to 11.4	25	30
11.5 to 13.4	(*)	(*)
13.5 to 15.4	35	36
15.5 to 17.4	33	37
17.5 to 19.4	40	40
19.5 to 21.4	(*)	(*)
21.5 to 23.4	46	46
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

(*) No data.

■ 12. Appendices D1 through D4 to Part 305 are revised to read as follows:

Appendix D1 To Part 305—Water Heaters—Gas

RANGE INFORMATION

Capacity (first hour rating in gallons)	Range of estimated annual energy costs (dollars/year)			
First hour rating	Natural gas ($/year)		Propane ($/year)	
	Low	High	Low	High
“Very Small”—less than 18	*	*	*	*
“Low”—18 to 50.9	$154	$155	*	*
“Medium”—51 to 74.9	177	206	437	560
“High”—over 75	225	297	506	732

* No data.

Appendix D2 to Part 305—Water Heaters Electric

RANGE INFORMATION

Capacity (first hour rating in gallons)	Range of estimated annual energy costs (dollars/year)	
First hour rating	Low	High
“Very Small”—less than 18	*	*
“Low”—18 to 50.9	$93	$295
“Medium”—51 to 74.9	120	423
High”—over 75	191	252

* No data.

Appendix D3 to Part 305—Water Heaters—Oil

RANGE INFORMATION

Capacity (first hour rating in gallons)	Range of estimated annual energy costs (dollars/year)	
First hour rating	Low	High
“Very Small”—less than 18	*	*
“Low”—18 to 50.9	*	*
“Medium”—51 to 74.9	*	*
High”—over 75	$649	$730

* No data.

Appendix D4 to Part 305—Water Heaters—Instantaneous-Gas

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)			
Capacity (maximum flow rate); gallons per minute (gpm)	Natural gas ($/year)		Propane ($/year)	
	Low	High	Low	High
“Very Small”—less than 1.6	*	*	*	*
“Low”—1.7 to 2.7	*	*	*	*
“Medium”—2.8 to 3.9	$130	$151	$321	$372
“High”—over 4.0	195	230	485	567

* No data.

■ 13. Appendix D5 is removed.

■ 14. Revise Appendix H to Part 305 to read as follows:

Appendix H to Part 305—Cooling Performance for Central Air Conditioners

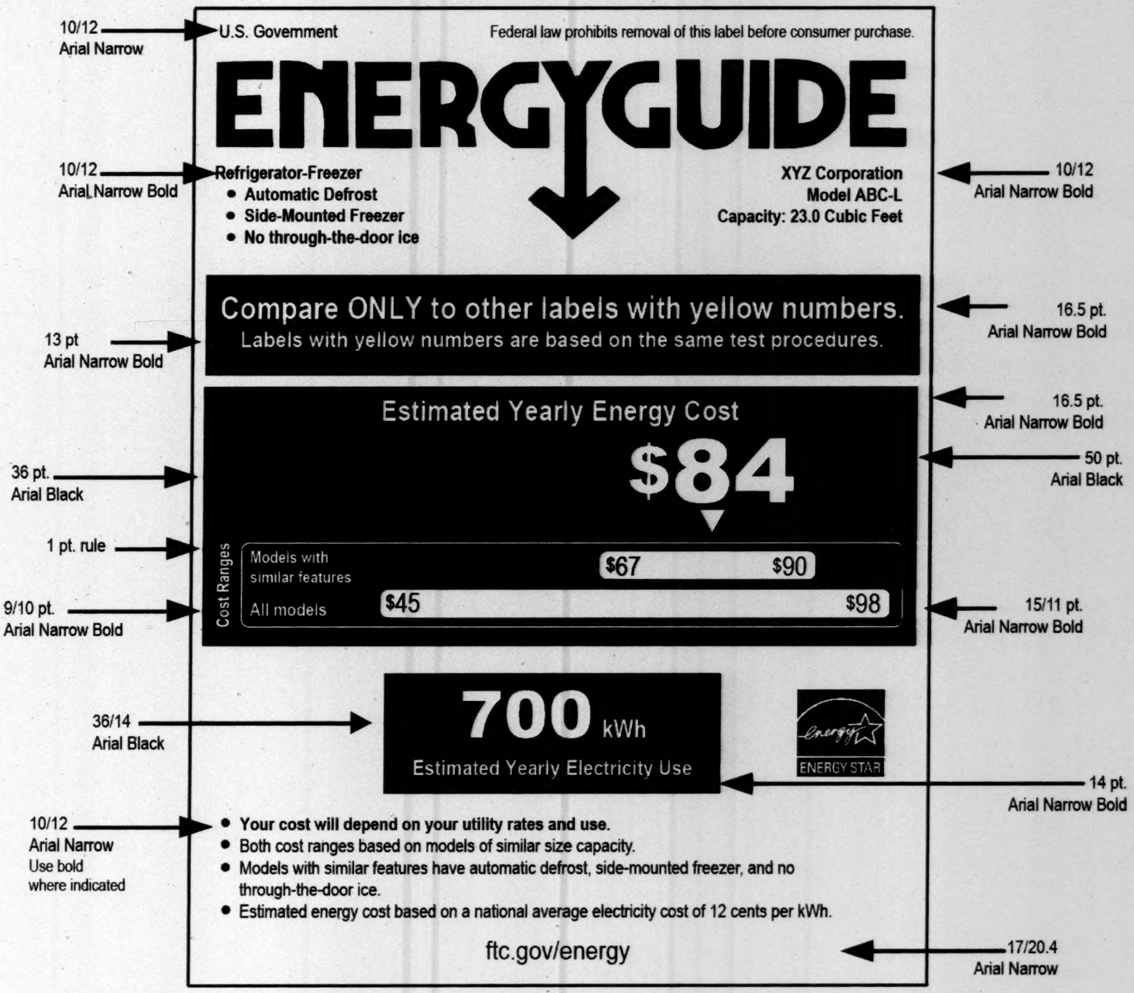
Manufacturer's rated cooling capacity (btu's/hr)	Range of SEER's	
	Low	High
Single Package Units		
Central Air Conditioners (Cooling Only): All capacities	14	20
Heat Pumps (Cooling Function): All capacities	14	18.1
Split System Units		
Central Air Conditioner models allowed only in northern states (listed in 305.12(g)(13)) (Cooling Only): All capacities	13	26
Central Air Conditioner models allowed in all states (Cooling Only):		
All capacities	14	26
Heat Pumps (Cooling Function): All capacities	14	30.5
Small-duct, high-velocity Systems	12	12.5
Space-Constrained Products		
Central Air Conditioners (Cooling Only): All capacities	12	14
Heat Pumps (Cooling Function): All capacities	12	14

■ 15. Amend Appendix L to Part 305 by revising Prototype Label 1, revising Sample Label 1, removing Sample Label 1A, and revising Sample Labels 5, 7 and 17 to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

BILLING CODE 6750–01–P



U.S. Government

Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Refrigerator-Freezer
- **Automatic Defrost**
- **Side-Mounted Freezer**
- **No through-the-door ice**

XYZ Corporation
Model ABC-L
Capacity: 23.0 Cubic Feet

Compare ONLY to other labels with yellow numbers.
Labels with yellow numbers are based on the same test procedures.

Estimated Yearly Energy Cost

$84

Cost Ranges

Models with similar features	$67	$90
All models	$45	$98

700 kWh

Estimated Yearly Electricity Use

ENERGY STAR

- **Your cost will depend on your utility rates and use.**
- Both cost ranges based on models of similar size capacity.
- Models with similar features have automatic defrost, side-mounted freezer, and no through-the-door ice.
- Estimated energy cost based on a national average electricity cost of 12 cents per kWh.

ftc.gov/energy

10/12
Arial Narrow

10/12
Arial Narrow Bold

13 pt
Arial Narrow Bold

36 pt.
Arial Black

1 pt. rule

9/10 pt.
Arial Narrow Bold

36/14
Arial Black

10/12
Arial Narrow
Use bold
where indicated

10/12
Arial Narrow Bold

16.5 pt.
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16.5 pt.
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50 pt.
Arial Black

15/11 pt.
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17/20.4
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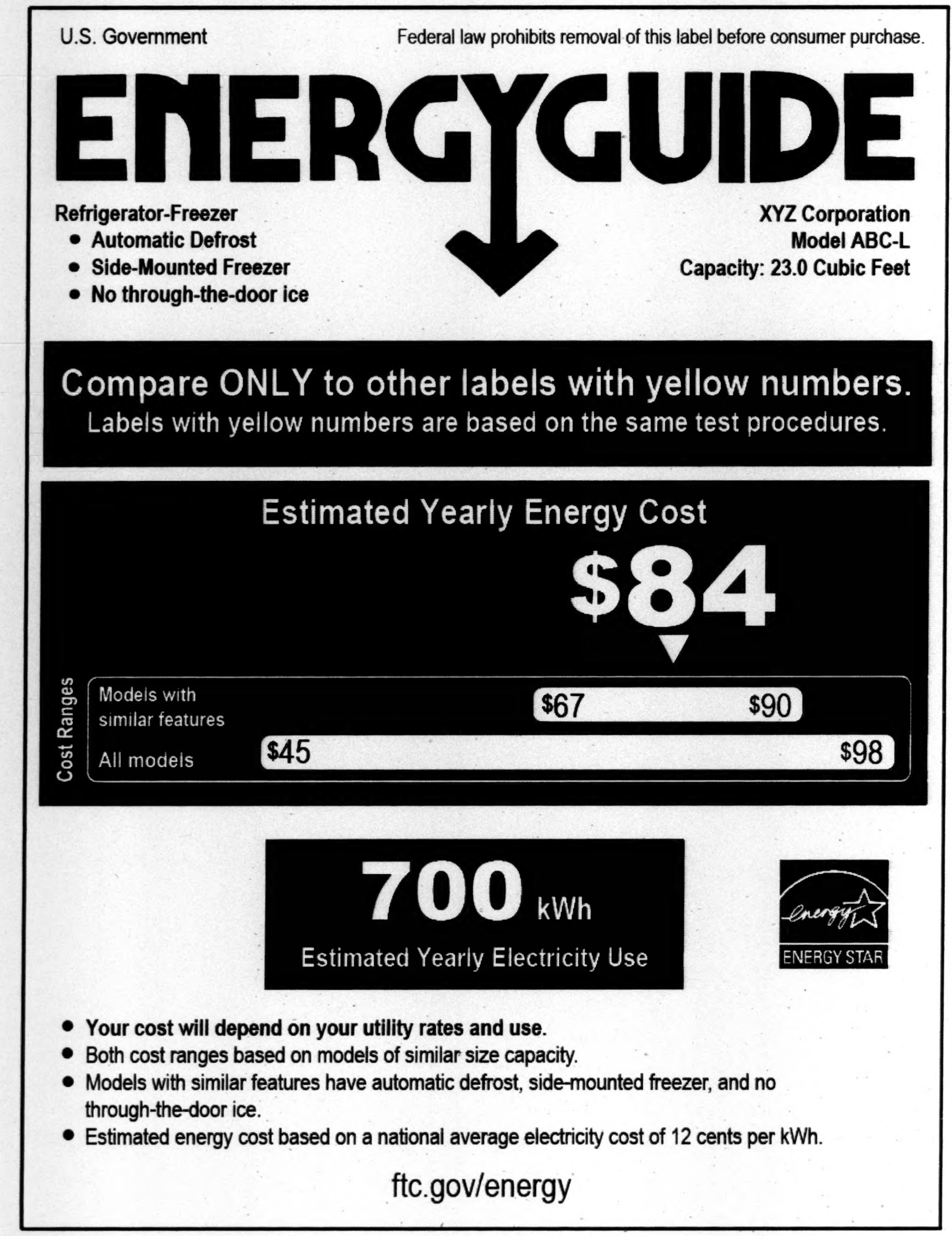
Prototype Label 1 – Refrigerator-Freezer

* * * * *



U.S. Government

Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Refrigerator-Freezer

- **Automatic Defrost**
- **Side-Mounted Freezer**
- **No through-the-door ice**

XYZ Corporation
Model ABC-L
Capacity: 23.0 Cubic Feet

Compare ONLY to other labels with yellow numbers.
Labels with yellow numbers are based on the same test procedures.

Estimated Yearly Energy Cost

$84

Cost Ranges

Models with similar features $67 $90

All models $45 $98

700 kWh

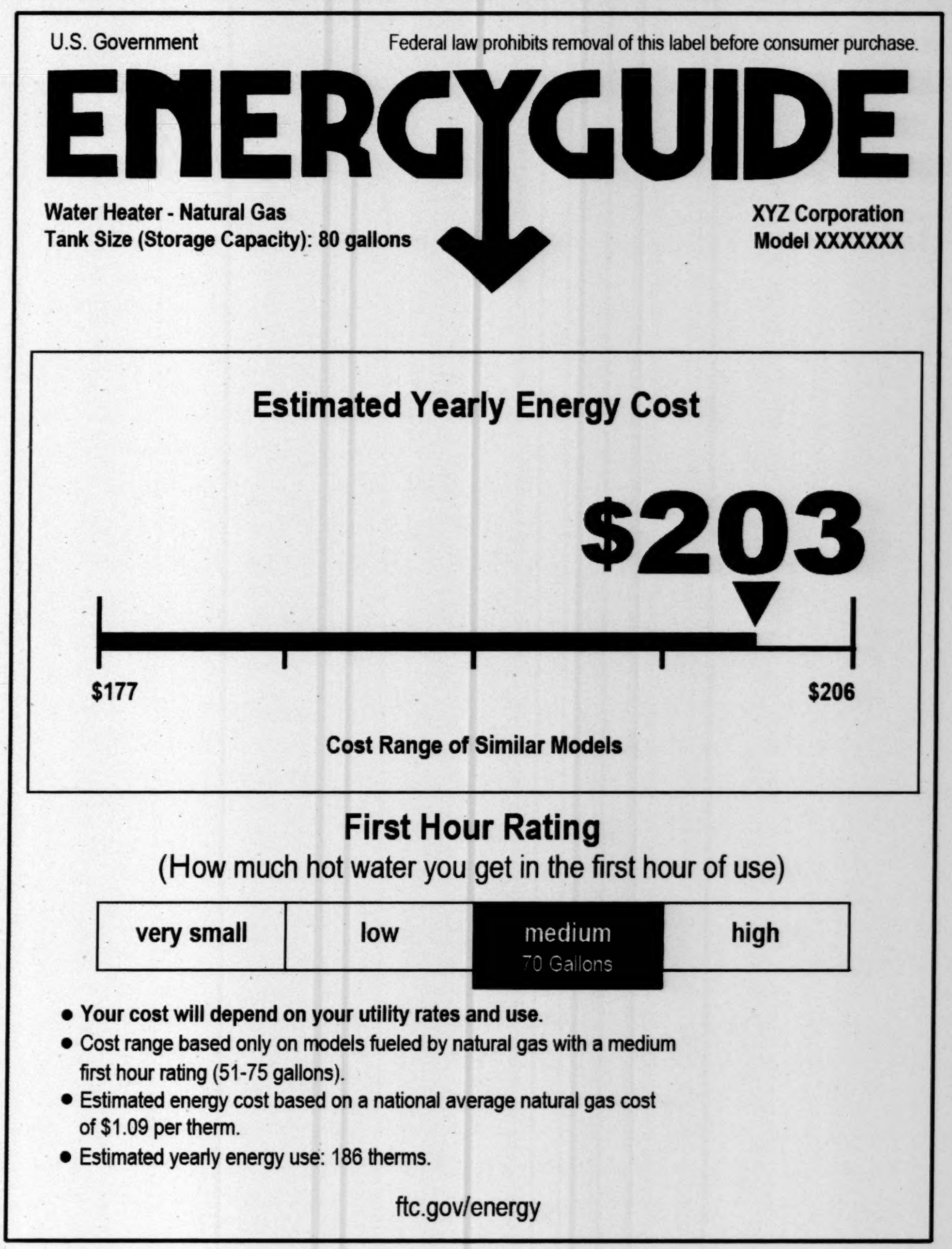
Estimated Yearly Electricity Use

- **Your cost will depend on your utility rates and use.**
- Both cost ranges based on models of similar size capacity.
- Models with similar features have automatic defrost, side-mounted freezer, and no through-the-door ice.
- Estimated energy cost based on a national average electricity cost of 12 cents per kWh.

ftc.gov/energy

Sample Label 1 – Refrigerator-Freezer

* * * * *



U.S. Government

Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Water Heater - Natural Gas
Tank Size (Storage Capacity): 80 gallons

XYZ Corporation
Model XXXXXXX

Estimated Yearly Energy Cost

$203

$177 **$206**

Cost Range of Similar Models

First Hour Rating
(How much hot water you get in the first hour of use)

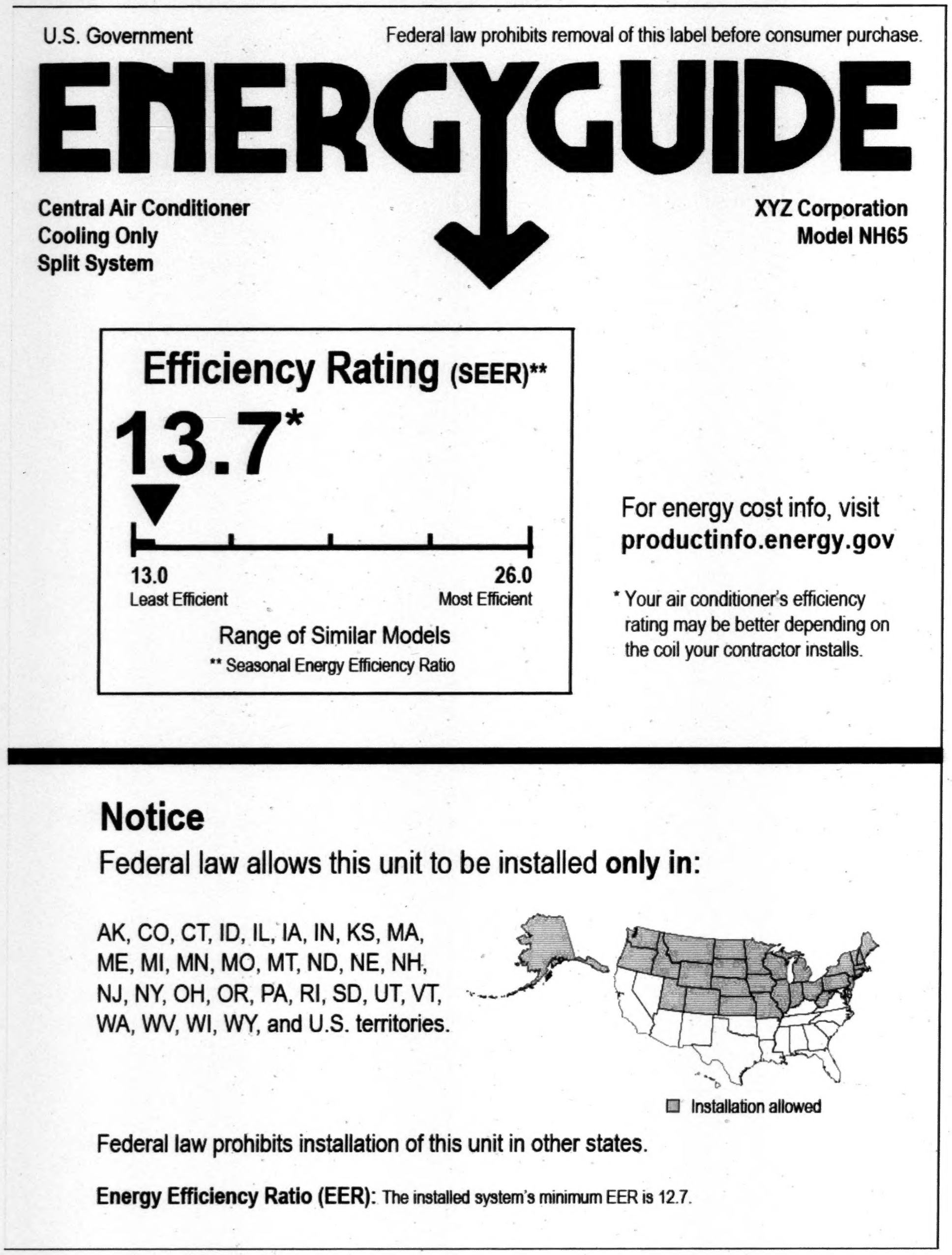
very small	low	medium 70 Gallons	high

- **Your cost will depend on your utility rates and use.**
- Cost range based only on models fueled by natural gas with a medium first hour rating (51-75 gallons).
- Estimated energy cost based on a national average natural gas cost of $1.09 per therm.
- Estimated yearly energy use: 186 therms.

ftc.gov/energy

Sample Label 5 – Water Heater

* * * * *



U.S. Government

Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model NH65

Efficiency Rating (SEER)**

13.7*

13.0
Least Efficient

26.0
Most Efficient

Range of Similar Models

** Seasonal Energy Efficiency Ratio

For energy cost info, visit **productinfo.energy.gov**

* Your air conditioner's efficiency rating may be better depending on the coil your contractor installs.

Notice

Federal law allows this unit to be installed **only in:**

AK, CO, CT, ID, IL, IA, IN, KS, MA, ME, MI, MN, MO, MT, ND, NE, NH, NJ, NY, OH, OR, PA, RI, SD, UT, VT, WA, WV, WI, WY, and U.S. territories.

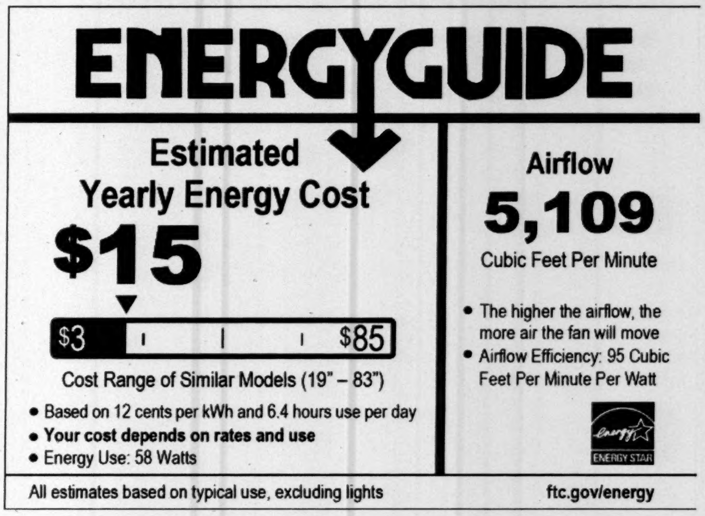
▨ Installation allowed

Federal law prohibits installation of this unit in other states.

Energy Efficiency Ratio (EER): The installed system's minimum EER is 12.7.

Sample Label 7 – Split-system Central Air Conditioner

* * * * *



ENERGYGUIDE

Estimated Yearly Energy Cost

$15

$3 | $85

Cost Range of Similar Models (19" – 83")

- Based on 12 cents per kWh and 6.4 hours use per day
- **Your cost depends on rates and use**
- Energy Use: 58 Watts

Airflow

5,109

Cubic Feet Per Minute

- The higher the airflow, the more air the fan will move
- Airflow Efficiency: 95 Cubic Feet Per Minute Per Watt

ENERGY STAR

All estimates based on typical use, excluding lights

ftc.gov/energy

Sample Label 17 – Ceiling Fan

* * * * *

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2016–21854 Filed 9–14–16; 8:45 am]

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Part IV

Federal Trade Commission

16 CFR Parts 701 and 702
Disclosure of Written Consumer Product Warranty Terms and Conditions; Pre-Sale Availability of Written Warranty Terms; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 701 and 702

RIN 3084–AB24 and AB25

Disclosure of Written Consumer Product Warranty Terms and Conditions; Pre-Sale Availability of Written Warranty Terms

ACTION: Final rule.

SUMMARY: In this document, the Federal Trade Commission (FTC or Commission) adopts amendments to the rules on Disclosure of Written Consumer Product Warranty Terms and Conditions (Disclosure Rule) and Pre-Sale Availability of Written Warranty Terms (Pre-Sale Availability Rule) to give effect to the E-Warranty Act, which allows for the use of Internet Web sites to disseminate warranty terms to consumers in some circumstances.

DATES: Effective on October 17, 2016.

ADDRESSES: This document is available on the Internet at the Commission's Web site at *www.ftc.gov*. The complete record of this proceeding, including the final amendments to the Disclosure Rule and the Pre-Sale Availability Rule and the Statement of Basis and Purpose, is available at *www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Gary Ivens, (202) 326–2330, Attorney, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This document states the basis and purpose for the Commission's decision to adopt amendments to the Disclosure Rule and the Pre-Sale Availability Rule that were proposed and published for public comment in the **Federal Register** on May 24, 2016.[1] After careful review and consideration of the entire record on the issues presented in this rulemaking proceeding, including seven public comments submitted by a variety of interested parties,[2] the Commission has decided to adopt, with some modifications, the proposed amendments to the Disclosure Rule and the Pre-Sale Availability Rule intended to implement the E-Warranty Act and effectuate its purpose. Beginning on October 17, 2016, warrantors and sellers will be required to comply with the amended Disclosure Rule and the amended Pre-Sale Availability Rule.

Background

I. The Magnuson-Moss Warranty Act and the E-Warranty Act

The Magnuson-Moss Warranty Act (MMWA) authorizes the Commission to prescribe rules requiring disclosure of warranty terms and requiring that the terms of any written warranty on a consumer product be made available to the prospective purchaser prior to the sale of the product.[3] In 1975, the Commission issued both the Disclosure Rule, which establishes disclosure requirements for written warranties, and the Pre-Sale Availability Rule, which includes requirements for sellers and warrantors to make the text of any warranty on a consumer product available to the consumer prior to sale. Among other things, the Pre-Sale Availability Rule requires most sellers to make warranties readily available either by: (1) Displaying the warranty document in close proximity to the product or (2) furnishing the warranty document on request and posting signs in prominent locations advising consumers that warranties are available. The Pre-Sale Availability Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements. The Rule also sets out how sellers should make warranty information available pre-sale if selling the product at retail locations, through catalogs, mail order, or door-to-door sales.

The E-Warranty Act[4] (E-Warranty or the Act) amends the MMWA to allow, under certain circumstances, the posting of warranties on warrantors' Internet Web sites as an alternative method of complying with the Pre-Sale Availability Rule, and to permit sellers to make warranty terms available to consumers pre-sale via electronic means where the warrantor has chosen the online method. E-Warranty charges the Commission with promulgating consistent changes to the Disclosure Rule and the Pre-Sale Availability Rule within one year of the Act's passage.[5]

II. Amending the Disclosure Rule and the Pre-Sale Availability Rule in Accordance With E-Warranty

A. The Disclosure Rule

The Disclosure Rule[6] establishes disclosure requirements for written warranties on consumer products that cost more than $15.00.[7] In 1975, the Commission issued the Disclosure Rule as authorized by Congress in the MMWA.[8]

The Disclosure Rule also specifies the aspects of warranty coverage that must be disclosed in written warranties, as well as the exact language that must be used for certain disclosures with respect to state law regarding the duration of implied warranties and the availability of consequential or incidental damages. Under the Disclosure Rule, warranty information must be disclosed in simple, easily understandable, and concise language in a single document. Similarly, the warrantor must disclose any limitations on the duration of implied warranties "on the face of the warranty," as mandated by MMWA.[9] In promulgating the Disclosure Rule, the Commission determined that certain material facts about product warranties must be disclosed because the failure to do so would be deceptive or misleading.

To comply with E-Warranty, the Commission revises the Disclosure Rule to specify that, for a warranty posted on an Internet Web site or displayed electronically, disclosures statutorily mandated to appear "on the face of the warranty" must be placed in close proximity to the location where the text of the warranty terms begins.

B. The Pre-Sale Availability Rule

The Pre-Sale Availability Rule[10] details the methods by which warrantors and sellers must provide warranty terms to consumers prior to sale of the warranted item. The Commission issued the Pre-Sale Availability Rule in 1975 in response to a mandate from Congress as set forth in the MMWA.

In accordance with the mandate in E-Warranty, the Commission revises the Pre-Sale Availability Rule to allow warrantors to post warranty terms on Internet Web sites if they also provide a non-Internet based method for consumers to obtain the warranty terms and satisfy certain other conditions, and to allow certain sellers to display warranty terms pre-sale in an electronic format if the warrantor has used the online method of disseminating warranty terms.

As discussed more fully below, these rule revisions are required by E-Warranty.

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[1] 81 FR 32680 (May 24, 2016).

[2] Comments are available at *https://www.ftc.gov/policy/public-comments/initiative-652*.

[3] 15 U.S.C. 2302.

[4] E-Warranty Act, Public Law 114–51 (Sept. 24, 2015).

[5] Under the E-Warranty Act, the Commission must issue the final amended rules by September 24, 2016.

[6] 16 CFR part 701.

[7] 40 FR 60171–60172 (Dec. 31, 1975)

[8] 15 U.S.C. 2302.

[9] *See* 15 U.S.C. 2308(b).

[10] 16 CFR part 702.

III. The Commission's Rule Changes and Analysis of Comments

The existing version of the Pre-Sale Availability Rule requires sellers to provide warranty terms pre-sale to consumers and allows them to choose among a variety of methods for doing so, including displaying the warranty terms in close proximity to the warranted products, furnishing them upon request prior to sale and posting prominent signs to let customers know that warranties can be examined upon request, printing them in a catalog in close conjunction to the warranted product, or having them available for consumers' review in a door-to-door sales presentation. The amendments will allow sellers the additional option of using an electronic method to make warranty terms available to consumers at the point of sale for warranted products where the warrantor has chosen the online method of disseminating the warranty terms.

Warrantors currently must provide sellers the warranty materials sellers need to meet their requirements under the Pre-Sale Availability Rule, such as providing copies of the warranty, providing warranty stickers, tags, signs, or posters, or printing the warranty on the product's packaging. The amendments do not alter the duties of warrantors who do not choose to employ an online method to supply warranty terms. E-Warranty provides that warrantors who choose the online method of disseminating warranty terms must provide consumers the address of the Internet Web site where the specific product's warranty terms can be reviewed and also supply a non-Internet method, such as a phone number or mailing address, for consumers to request the warranty terms. Under the amendments, if a consumer or seller[11] makes such a request, the warrantor must provide the warranty terms promptly and free of charge.

The first rule revision alters § 701.1 to add a definition of the term "manufacturer" at § 701.1(g) (defining manufacturer as "any person engaged in the business of making a consumer product"), add that term in the definition of "warrantor," and re-letter the paragraphs in § 701.1 to account for the additional definition. The Commission makes these revisions in light of E-Warranty's use of the term "manufacturer."[12]

The next revision adds a new § 701.1(j)(3) to specify that, in conjunction with warranty terms posted on an Internet Web site or displayed electronically, the phrase "on the face" means in close proximity to the location where the warranty terms begin. Although the Disclosure Rule does not explicitly mention online commerce, it applies to the sale of warranted consumer products online.[13] Commission staff recently updated the .Com Disclosures to provide additional guidance on disclosure obligations in the online context. As stated in the updated .Com Disclosures, warranties disseminated online are no different from paper versions and the same rules apply.[14]

The next revision is to § 702.1(d) to include the manufacturer in the definition of "warrantor." The Commission makes this revision to comport with E-Warranty's use of the term "manufacturer." The next revision adds a new § 702.1(g) to define a "manufacturer," in accordance with the addition of the term "manufacturer" in § 701.1(g), as "any person engaged in the business of making a consumer product."

The revisions to § 702.3(a) allow sellers to provide warranty terms pre-sale through electronic means if the warrantor of the product has chosen the online method.[15] If a seller uses an electronic means of displaying the warranty terms, that seller must still make the warranty text readily available for consumers' examination prior to sale. The changes to § 702.3(b)(1)(i) will remove superfluous instances of the term "and/or" and "and" in that paragraph, as the prefatory language already notes that the warrantor must use one *or more* of the methods described in that paragraph to provide sellers with the prescribed warranty materials.

The next revision adds a new § 702.3(b)(2) to reflect that, as an alternative method of compliance with the Pre-Sale Availability Rule, a warrantor may refer consumers to an accessible online copy of the warranty by providing to the consumer the Internet address where the specific product's warranty has been posted in a clear and conspicuous manner. To employ this option, the warrantor, among other duties, must supply in the product manual, or on the product or product packaging, the Internet address where the consumer can review and obtain the specific product's warranty terms, as well as the phone number, postal mailing address, or other reasonable non-Internet based means for the consumer or seller to request a free copy of the warranty terms.

Revised § 702.3(b)(2)(iv) requires any warrantor utilizing the online method to provide sufficient information with the consumer product or on the Internet Web site so that the consumer can readily locate the specific product's warranty terms. The Commission believes that this requirement comports with Congress's directive that online warranties be available to consumers "in a clear and conspicuous manner." [16] Similarly, if a consumer or seller requests via phone, mail, or other reasonable non-Internet-based means, that the warrantor provide a hard copy of the warranty, revised § 702.3(b)(2)(ii) requires the warrantor to provide it promptly and free of charge, which comports with existing pre-sale requirements for catalog and mail order sales.[17]

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[11] The revised rule gives sellers the option of requesting the warranty terms free of charge from the warrantor because not all sellers have the ability to provide warranty terms pre-sale using electronic means when the warrantor has chosen the online method to supply warranty terms. For example, a small seller may not have Internet access or electronic devices to download and display warranty terms for consumers' review at the point of sale. Those sellers' duties to have warranty terms available pre-sale, however, have not changed under E-Warranty. The Commission believes that requiring warrantors to supply sellers with a hard copy of warranty terms upon request, in order to allow sellers to make them available for consumers' review at the point of sale, effectuates Congress's desire to ensure the continued availability of pre-sale warranty terms.

[12] The Retail Industry Leaders Association (RILA) suggests adding the term "manufacturer" to the definition of "warrantor" in § 701.1, to match the proposed revised definition of "warrantor" in § 702.1. Comment of RILA (available at *https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00005*) at 2. The Commission proposed this revision in the original NPRM, as noted in the description of the Commission's Proposed Rule Changes. *See* 81 FR at 32681. However, a scrivener's error led to the deletion of the related rule text in the amendatory instructions.

[13] One commenter suggests that the Commission also consider amending § 701.3(a) to define the term "document" or "single document" to clarify how a warrantor can provide required information electronically in a "single document" pursuant to that paragraph. *See* Comment of the National Automobile Dealers Association (NADA) (available at *https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00007*) at 2. The Commission believes that these terms have sufficiently understood common meanings and declines to make the suggested amendment.

[14] *See* FTC, .Com Disclosures: How to Make Effective Disclosures in Digital Advertising (2013), at 3, fn.7, available at *https://ftc.gov/os/2013/03/130312dotcomdisclosures.pdf.* The RILA comment at 2 asks the Commission to clarify whether and how Internet-only or omni-channel retailers have to comply with the Pre-Sale Availability Rule. These sellers' obligations remain the same under E-Warranty—they must make the warranty terms available to consumers pre-sale. The requirement to make warranties available at the point of purchase can be accomplished easily with respect to online sales by, for example, using a clearly-labeled hyperlink, in close proximity to the description of the warranted product, such as "get warranty information here" to lead to the full text of the warranty, and presenting the warranty in a way that it can be preserved, either by downloading or printing, so consumers can refer to it after purchase. *Id.* However, sellers at brick-and-mortar locations could not comply with the seller's Pre-Sale Availability Rule obligations simply by referring the consumer to a Web site where the warranty could be found, as this would conflict with Congress's mandate that the online method not supplant the seller's duty to provide warranty terms at the point of sale.

[15] NADA asks whether a dealer may provide a physical copy of the manufacturer's warranty upon request, even if the manufacturer has elected the online method. *See* NADA comment at 3. If the warrantor has elected the online method, the seller can choose between providing the warranty terms through electronic means or through other means (such as furnishing a hard copy).

The next revision alters § 702.3(c)(2)(i)(B) to reflect that a mail-order or catalog seller must provide the address of the Internet Web site of the warrantor where the warranty terms can be reviewed (if such Internet Web site exists), as well as either a phone number or address that the consumer can use to request a free copy of the warranty, and notes that the seller may provide the copy electronically if the product's warrantor has used the online method.

Finally, the next revision alters § 702.3(d)(2) to reflect that a door-to-door seller may supply the warranty terms for the consumer's pre-sale review through an electronic option if the product's warrantor has employed the online method.

The Commission received seven comments in response to the Notice of Proposed Rulemaking. In response to one comment, the Commission makes one change in the final version of the Pre-Sale Availability Rule, as discussed below.

Comments generally supported the Commission's proposals.[18] One commenter requests the Commission to clarify whether MMWA applies to all warranties required by other federal laws.[19] The Commission notes that § 700.1(a) of the Interpretations of Magnuson-Moss Warranty Act defines the scope of the MMWA and states it "applies to written warranties on tangible personal property which is normally used for personal, family, or household purposes." [20] The MMWA covers warranties required by other federal laws only to the extent such warranties fall within the scope of § 700.1(a).

Another commenter suggests that the Commission provide guidance as to the meaning of the term "accessible digital format," and urges the Commission to be reasonable in interpreting how warranty terms remain accessible on Web sites, how hard copies of warranties are to be provided, and the means by which the addresses of warranty Web sites may be accessed.[21] The Commission agrees that providing an electronic warranty in an "accessible digital format" generally means the electronic warranty should be readily available to consumers on the warrantor's Web site. Given the speed of technological innovation, the Commission believes defining the term might impose unnecessary limitations on the ability of companies to comply with E-Warranty using future digital innovations.[22] The commenter's remaining comments about the need for practical and flexible interpretations of the Rule raise issues that the Commission will consider when determining whether to bring an enforcement action for potential violations of E-Warranty and the related rules.

Two commenters urge the Commission to adopt a rule that would allow sellers to refer consumers to an Internet Web site where the warrantor has posted warranty terms to satisfy sellers' obligations under the Pre-Sale Availability Rule.[23] The Commission declines to do so. Congress's intention in enacting E-Warranty was not to disturb prospective purchasers' ability to obtain the full warranty terms at the point of sale, as envisioned by the Pre-Sale Availability Rule.[24] While consumers with electronic devices and Internet connectivity may be able to review warranty terms at the point of sale by visiting the Web site that contains the warranty terms, not all consumers have such devices and Internet connectivity.

NADA comments that use of the past tense in the phrase "specific product purchased by the consumer" in § 702.3(b)(2)(iv) may cause confusion in the Pre-Sale Availability Rule,[25] because consumers could choose to review these warranty terms both before and after a sale. To remove any confusion, the Commission will alter the language for the final rule, replacing the phrase "specific product purchased by the consumer" with "specific warranted product."

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[16] *See* 15 U.S.C. 2302(b)(4)(A)(i).

[17] NADA asks how the warrantor's duty under § 702.3(b)(2)(ii) to provide a hard copy of the warranty upon request interacts with the seller's duty under § 702.3(a)(2) to furnish the warranty terms upon request prior to sale. *See* NADA comment at 3–4. The seller's duty to furnish warranty terms for the consumer to review pre-sale in § 702.3(a)(2) requires only that the seller make the warranty terms available for review at the place of sale; the warrantor's duty to provide a hard copy of the warranty upon request (where the warrantor has elected the online method for providing warranty terms) ensures that consumers without the ability to obtain warranty terms from a Web site have the ability to secure a hard copy of the warranty terms. The warrantor's duty under § 702.3(b)(2)(ii) stems from E-Warranty's requirement that consumers have a "reasonable non-Internet based means of contacting *the manufacturer* to obtain and review" warranty terms. 15 U.S.C. 2302(b)(4)(A)(ii)(II) (emphasis added). The Commission interprets this statutory language to mean that, if a warrantor chooses the online method and a consumer uses the non-Internet based means to contact the warrantor and request a copy of the warranty, the *warrantor* must provide the warranty terms to the consumer. This new requirement under the E-Warranty Act is independent of the existing requirement under the MMWA and current § 702.3(a)(2) that *sellers* must furnish the warranty terms upon request prior to sale.

[18] *See* comments of Linda Gibson (available at *https://www.ftc.gov/policy/public-comments/2016/05/19/comment-00001*), Catherine Corn (available at *https://www.ftc.gov/policy/public-comments/2016/06/15/comment-00002*), Alliance of Automobile Manufacturers (available at *https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00003*), RILA.

[19] Comment of Erin Ashcroft (available at *https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00006*). *See also* 42 U.S.C. 7541 and 40 CFR 1054.120.

[20] *See* 16 CFR 700.1(a).

[21] Comment of the Consumer Technology Association (CTA) (available at *https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00004*).

[22] The CTA comment at 3–4 also suggests that the Commission permit display, in addition to the URL of the warranty terms, of machine-readable symbols, such as bar codes or QR codes, for consumers to access and review warranty terms. The Commission agrees that inclusion of these symbols with the URL could assist consumers seeking to access and review warranty terms, but declines, at this time, to permit such additional methods to replace the display of the URL containing the warranty terms for warrantors relying on the option set forth in § 702.3(b)(2). Warrantors, however, may display such symbols in addition to displaying the URL containing the warranty terms.

[23] RILA comment at 2; NADA comment at 3 (questioning whether a seller could comply by referring a prospective buyer to the warranty Web site).

[24] *See, e.g.,* H. Rpt. 114–243 (Sept. 8, 2015) at 2–3 ("H.R. 3154 would require the FTC to update the warranty rules to allow manufacturers to fulfill their obligations by making warranty information available online or through other electronic means while ensuring that consumers[] and prospective consumers remain able to obtain copies of warranties at the point of sale . . . .").

[25] NADA comment at 2. The NADA comment raises several other issues. For example, NADA asks whether a seller can fulfill its obligation under § 702.3(a) by merely supplying the prospective purchaser with the URL of the warranty terms' Web site (*e.g.,* a URL printed on a sign displayed in close proximity to the vehicle or printed in the owner's manual). *See* NADA comment at 3–4. Such an approach would be inconsistent with Congress's intent in passing E-Warranty. As noted in the foregoing footnote and accompanying text, Congress's passage of E-Warranty did not alter the requirement that warranty terms be available at the point of sale. If the warrantor has opted to use the online method and the seller cannot or chooses not to use an electronic method to display the warranty text upon consumers' request, the seller can ask the warrantor to supply a hard copy of the warranty terms to the seller, as provided in § 702.3(b)(2)(ii). NADA also asks for guidance on how dealers who offer their own warranties can refer to warranty information in the Buyers Guide that must accompany every used vehicle pursuant to the Used Car Rule. The Commission notes that there is no conflict between the language in the Buyers Guide, which requires the dealer merely to inform a prospective purchaser whether the automobile for sale has a warranty, and the obligations of dealers who offer their own warranties and choose the online method in § 702.3(b)(2).

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act[26] (RFA) requires each agency either to provide an Initial Regulatory Flexibility Analysis (IRFA)[27] with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA)[28] with the final rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[29] The FTC does not expect that the rule revisions necessitated by E-Warranty will have a significant economic impact on small sellers and warrantors. As discussed above, the revisions will relieve those warrantors who choose the online method from providing warranty materials to certain sellers. Affected sellers, however, should be able easily to obtain the warranties and provide them to consumers for review at the point of sale, either by obtaining the warranties from the warrantor's Web site or by requesting a hard copy from the warrantor. Also, the amendments allow sellers of goods whose warrantors have employed the online method the ability to provide pre-sale warranty terms electronically. Thus, under the revised Rule, a small seller that is in compliance with current law would need to take only minimal additional action to remain compliant.

The small warrantor that does not choose the online method to supply warranty terms can remain compliant simply by continuing with its existing practices. If a small warrantor has previously been including the entire warranty with the warranted product and supplying warranty materials so that sellers can meet Pre-Sale Availability Rule obligations, but instead elects the online method under the amendments, the small warrantor will have a smaller overall compliance burden because it will be able to provide the warranty terms solely on an Internet Web site. That small warrantor, however, will likely incur some costs to establish a phone number, address, or other non-Internet based method that consumers and sellers can use to request a free hard copy of warranty terms.

With respect to the amendments to the Disclosure Rule, a small entity that is in compliance with current law need not take any different or additional action under the revised rule, as the revisions merely explain how the "on the face of the warranty" requirement applies to online warranty terms.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's continued certification that the amendments will not have a significant economic impact on a substantial number of small entities.[30] To ensure the accuracy of this certification, the Commission sought comment on whether the proposed amendments would have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed amendments, the number of these companies that are small entities, and the average annual burden for each entity. Although the Commission certified under the RFA that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities, it included an IRFA in the NPRM and solicited public comment on it. None of the public comments received addressed the IRFA. The Commission continues to believe that the amendments it is adopting will not have a significant economic impact upon small entities, but nonetheless in the interest of caution is providing this FRFA.

A. Need for, and Objectives of, the Rule Amendments

As outlined in Sections II through III above, the amendments to the Disclosure Rule and Pre-Sale Availability Rule are made in connection with Congress's passage of E-Warranty. E-Warranty allows, under certain circumstances, the posting of warranties on manufacturers' Web sites as an alternative method of complying with the Pre-Sale Availability Rule, and allows certain sellers to use an electronic method to supply pre-sale warranty terms.

The objective of the rule amendments is to provide warrantors an online method of complying with the Disclosure Rule and the Pre-Sale Availability Rule, allow certain sellers to use an electronic method to provide pre-sale warranty terms to consumers, and to define what "on the face" of an online warranty means in the Disclosure Rule.

B. Significant Issues Raised by Comments in Response to the Proposed Rule Amendments

The Commission's responses to issues raised by commenters are discussed above in Section III, including issues about (1) the interaction between a warrantor's duty to provide a hard copy of an online warranty upon request to either a seller or a prospective purchaser of a warranted product, and a seller's duty to furnish the warranty terms upon request prior to sale, and (2) whether sellers may satisfy their obligations under the Pre-Sale Availability Rule simply by referring consumers to an Internet Web site where the warrantor has posted warranty terms.

The Commission notes that the Chief Counsel for Advocacy of the Small Business Administration did not submit comments on the revisions.

C. Description and Estimate of the Number of Small Entities to Which the Rule Amendments Will Apply

The small entities to which the Disclosure Rule applies are warrantors. The small entities to which the Pre-Sale Availability Rule applies are warrantors and sellers of warranted consumer products costing more than fifteen dollars. The Disclosure Rule and the Pre-Sale Availability Rule currently define a "warrantor" as "any supplier or other person who gives or offers to give a written warranty." The Pre-Sale Availability Rule defines a "seller" as "any person who sells or offers for sale for purposes other than resale or use in the ordinary course of the buyer's business any consumer product." The amendments add "manufacturers" to both Rules' definitions of "warrantor." Sellers include retailers, catalog and mail order sellers, and door-to-door sellers.

In 2014, the Commission estimated that there were 13,395 small manufacturers (warrantors) and 452,553 small retailers (sellers) impacted by the Rules.[31]

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to the Disclosure Rule do not impose any new reporting, recordkeeping, or other compliance requirements (*e.g.*, new disclosures). Rather, the amendments merely explain how the existing "on the face of the warranty" requirement for disclosures applies to online and electronic warranty terms (*i.e.*, the required disclosures must be in close proximity to the warranty terms).

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[26] 5 U.S.C. 601–612.

[27] 5 U.S.C. 603.

[28] 5 U.S.C. 604.

[29] 5 U.S.C. 605.

[30] The Commission's estimate of the number of small entities potentially affected by the rule amendments is set forth *infra*.

[31] *See* 79 FR 8185 (Feb. 11, 2014), which relates to the Pre-Sale Availability Rule, but should also apply to the Disclosure Rule.

The Pre-Sale Availability Rule imposes disclosure obligations on sellers and warrantors of warranted consumer goods actually costing more than fifteen dollars. Specifically, sellers must make warranty terms available prior to sale. Under the rule amendments, if the warrantor has chosen the online method, sellers may incur minimal additional costs if they need to request the warranty terms from the warrantor to provide them to consumers, but sellers will also have additional flexibility to make pre-sale warranty terms available to consumers electronically. Warrantors must either continue to provide sellers with warranty materials for sellers' use at the point of sale as they do under the current rule, or, under the revision, provide the address of the warrantor's Internet Web site where consumers can review and obtain warranty terms in the product manual or on the product or product packaging, and the warrantor's contact information for the consumer to obtain the warranty terms via a non-Internet method.

Neither the existing Pre-Sale Availability Rule nor the amendments require sellers or warrantors to retain more records than may be necessary to provide consumers the warranty terms. The small entities potentially covered by these amendments will include all such entities subject to the Rules, including suppliers, manufacturers and others who warrant consumer goods costing more than fifteen dollars and retailers, catalog and mail-order sellers, and door-to-door sellers who offer the warranted products. The professional skills necessary for compliance with the Rules as modified by the amendments would include (1) warrantors' office and administrative support staff to receive consumers' and sellers' requests for warranty terms using a non-Internet based method and (2) sellers' office and administrative support staff to request warranty terms for pre-sale availability to consumers for warranted goods where the warrantor has elected only the online method and the seller cannot or chooses not to display the warranty terms electronically.

E. Steps Taken by the Agency To Minimize the Significant Impact, If Any, on Small Entities, Consistent With the Stated Objectives of Applicable Statute(s)

Commenters urged the Commission to adopt a rule that would allow sellers to comply with their obligations under the Pre-Sale Availability Rule simply by referring consumers to an Internet Web site where the warrantor has posted warranty terms. In a recent rule review of the Pre-Sale Availability Rule, the Commission considered and declined to adopt similar suggestions by commenters that offline sellers be allowed to comply with the Rule by advising buyers of the availability of the warranty at a particular Web site.[32] The Commission noted that, because the intent of the Rule is to make warranty information available at the point of sale, a seller could not comply with its Pre-Sale Availability Rule obligations simply by referring the consumer to a Web site where the warranty could be found.[33] Those same considerations still apply in the present rulemaking proceeding. The final rule amendments comport with Congress's desire to allow warrantors the option of providing warranty terms online, as long as warrantors offer a non-Internet based method for consumers to obtain the warranty terms, as well as with Congress's mandate that the online method not supplant the seller's duty to provide warranty terms at the point of sale.

Because the rule amendments provide an alternative means of compliance that is available to businesses of all sizes, it is not necessary to provide a specific small entity exemption.

The Commission believes the final rule amendments will be minimally burdensome for small businesses and that they comply with Congress's mandate to allow warrantors to post warranty terms on an Internet Web site and certain sellers to employ a pre-sale electronic display option, while ensuring pre-sale availability of warranty terms at the point of sale.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[34] federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Commission may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection, unless the information displays a valid control number assigned by OMB.

These amendments revise 16 CFR parts 701 and 702. The collection of information related to the Disclosure Rule has been previously reviewed and approved by OMB in accordance with the PRA under OMB Control Number 3084–0111. The collection of information related to the Pre-Sale Availability Rule has been previously reviewed and approved by OMB in accordance with the PRA under OMB Control Number 3084–0112. As explained below, the amendments only slightly modify or add to information collection requirements that were previously approved by OMB. Under these amendments, a warrantor will be permitted, but not required, to use an online method for supplying warranty terms. The Commission does not believe that these amendments would impose any new or substantively revised collections of information as defined by the PRA. None of the public comments received addressed the PRA.

Under the most recent proposed clearance for the Pre-Sale Availability Rule, FTC staff estimated total annual hours burden to be 2,446,610. This figure represented a 20% reduction from the 2010 estimate based in large part on the growth of online sales and the online posting of warranty terms related to those sales. The most recent estimate included 2,315,608 hours for retailers and 131,002 hours for manufacturers. Staff estimated the total annual labor cost in 2014 to be $51,379,000 (rounded to the nearest thousand).[35]

In the most recently proposed clearance for the Pre-Sale Availability Rule, Commission staff also stated its belief that total annual capital or other non-labor costs are *de minimis* because the vast majority of sellers and warrantors already have developed systems to provide the information the rule requires. Compliance by sellers typically entails keeping warranties on file, in binders or otherwise, and posting an inexpensive sign indicating warranty availability. Warrantor compliance under the revisions entails providing sellers with a copy of the warranties together with the product or providing with the warranted good the address of the warrantor's Internet Web site where the consumer can review and obtain the warranty terms, along with the contact information where the consumer may use a non-Internet based method to obtain a free copy of the warranty terms. Sellers of warranted goods for which the warrantor has chosen the online method may incur a slightly increased burden because the seller will have to ensure it provides consumers a method of reviewing the warranty terms at the point of sale, prior to sale. That burden, however, should be minimal, given that the warrantor will have to make the warranty terms available on an Internet Web site, and given the provision requiring the warrantor to supply a hard copy of the warranty terms, promptly and free of charge, in response to a seller's request. In addition, any burden on sellers will be offset by sellers having additional flexibility to make pre-sale warranty terms available to consumers electronically. Commission staff believes that, in light of the amendment, annual capital or other non-labor costs will remain *de minimis*.

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[32] 80 FR 42710, 42717 (July 20, 2015).

[33] *Id.*

[34] 44 U.S.C. 3501–3520.

[35] *See* 79 FR 8185 (Feb. 11, 2014).

List of Subjects

16 CFR Part 701

Trade practices, Warranties.

16 CFR Part 702

Trade practices, Warranties.

Authority and Issuance

For the reasons set forth in the preamble, the Commission amends 16 CFR parts 701 and 702 as follows:

PART 701—DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 15 U.S.C. 2302 and 2309.

■ 2. Amend § 701.1 by redesignating paragraphs (g) through (i) as paragraphs (h) through (j), adding new paragraph (g), revising paragraph (h), and revising redesignated paragraph (j) to read as follows:

§ 701.1 Definitions.

* * * * *

(g) *Manufacturer* means any person engaged in the business of making a consumer product.

(h) *Warrantor* means any supplier, manufacturer, or other person who gives or offers to give a written warranty.

* * * * *

(j) *On the face of the warranty* means:

(1) Where the warranty is a single sheet with printing on both sides of the sheet or where the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) Where the warranty is included as part of a larger document, such as a use and care manual, the page in such document on which the warranty text begins;

(3) Where the warranty is on an Internet Web site or displayed electronically, in close proximity to the location where the warranty text begins.

PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

■ 3. The authority for part 702 continues to read as follows:

Authority: 15 U.S.C. 2302 and 2309.

■ 4. Amend § 702.1 by revising paragraph (d) and adding paragraph (g) to read as follows:

§ 702.1 Definitions.

* * * * *

(d) *Warrantor* means any supplier, manufacturer, or other person who gives or offers to give a written warranty.

* * * * *

(g) *Manufacturer* means any person engaged in the business of making a consumer product.

■ 5. Revise § 702.3 to read as follows:

§ 702.3 Pre-sale availability of written warranty terms.

The following requirements apply to consumer products actually costing the consumer more than $15.00:

(a) *Duties of seller.* Except as provided in paragraphs (c) through (d) of this section, the seller of a consumer product with a written warranty shall make a text of the warranty readily available for examination by the prospective buyer by:

(1) Displaying it in close proximity to the warranted product (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section), or

(2) Furnishing it upon request prior to sale (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section) and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

(b) *Duties of the warrantor.* (1) A warrantor who gives a written warranty warranting to a consumer a consumer product actually costing the consumer more than $15.00 shall:

(i) Provide sellers with warranty materials necessary for such sellers to comply with the requirements set forth in paragraph (a) of this section, by the use of one or more of the following means:

(A) Providing a copy of the written warranty with every warranted consumer product;

(B) Providing a tag, sign, sticker, label, decal or other attachment to the product, which contains the full text of the written warranty;

(C) Printing on or otherwise attaching the text of the written warranty to the package, carton, or other container if that package, carton or other container is normally used for display purposes. If the warrantor elects this option a copy of the written warranty must also accompany the warranted product; or

(D) Providing a notice, sign, or poster disclosing the text of a consumer product warranty. If the warrantor elects this option, a copy of the written warranty must also accompany each warranted product.

(ii) Provide catalog, mail order, and door-to-door sellers with copies of written warranties necessary for such sellers to comply with the requirements set forth in paragraphs (c) and (d) of this section.

(2) As an alternative method of compliance with paragraph (b)(1) of this section, a warrantor may provide the warranty terms in an accessible digital format on the warrantor's Internet Web site. If the warrantor elects this option, the warrantor must:

(i) Provide information to the consumer that will inform the consumer how to obtain warranty terms by indicating, in a clear and conspicuous manner, in the product manual or on the product or product packaging:

(A) The Internet Web site of the warrantor where such warranty terms can be reviewed, and

(B) The phone number, the postal mailing address of the warrantor, or other reasonable non-Internet based means for the consumer to request a copy of the warranty terms;

(ii) Provide a hard copy of the warranty terms promptly and free of charge upon request by a consumer or seller made pursuant to paragraph (b)(2)(i)(B) of this section;

(iii) Ensure that warranty terms are posted in a clear and conspicuous manner and remain accessible to the consumer on the Internet Web site of the warrantor; and

(iv) Provide information with the consumer product or on the Internet Web site of the warrantor sufficient to allow the consumer to readily identify on such Internet Web sites the warranty terms that apply to the specific warranted product.

(3) Paragraph (a)(1) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; provided that

(i) The disclosures required by § 701.3(a)(1) through (9) of this chapter are published by such third parties in each issue of a publication with a general circulation, and

(ii) Such disclosures are provided free of charge to any consumer upon written request.

(c) *Catalog and mail order sales.* (1) For purposes of this paragraph:

(i) Catalog or mail order sales means any offer for sale, or any solicitation for an order for a consumer product with a written warranty, which includes instructions for ordering the product which do not require a personal visit to the seller's establishment.

(ii) Close conjunction means on the page containing the description of the warranted product, or on the page facing that page.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of a catalog or mail order solicitation shall clearly and conspicuously disclose in such catalog or solicitation in close conjunction to the description of the warranted product, or in an information section of the catalog or solicitation clearly referenced, including a page number, in close conjunction to the description of the warranted product, either:

(i) The full text of the written warranty; or

(ii) The address of the Internet Web site of the warrantor where such warranty terms can be reviewed (if such Internet Web site exists), as well as that the written warranty can be obtained free upon specific request, and the address or phone number where such warranty can be requested. If this option is elected, such seller shall promptly provide a copy of any written warranty requested by the consumer (and may provide such copy through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section).

(d) *Door-to-door sales.* (1) For purposes of this paragraph:

(i) Door-to-door sale means a sale of consumer products in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by a buyer, and the buyer's agreement to offer to purchase is made at a place other than the place of business of the seller.

(ii) Prospective buyer means an individual solicited by a door-to-door seller to buy a consumer product who indicates sufficient interest in that consumer product or maintains sufficient contact with the seller for the seller reasonably to conclude that the person solicited is considering purchasing the product.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of door-to-door sales shall, prior to the consummation of the sale, disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer at any time during the sales presentation. Such disclosure shall be made orally and shall be included in any written materials shown to prospective buyers. If the warrantor has elected the option described in paragraph (b)(2) of this section, the sales representative may provide a copy of the warranty through electronic or other means.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–21853 Filed 9–14–16; 8:45 am]

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